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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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**U.S. Citizenship
and Immigration
Services**

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DATE: **MAY 15 2012** OFFICE: PANAMA CITY, PANAMA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Ecuador, was found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act) for fraud or material misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Fiancé (Form I-129F) filed by his U.S. citizen fiancée. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act based on extreme hardship to his fiancée.

On April 26, 2010, the Field Office Director concluded that the hardship that the applicant's U.S. citizen fiancée would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant states that new evidence demonstrates that the applicant's U.S. citizen fiancée will suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to, counsel's brief, medical records for the applicant's spouse, a psychological evaluation of the applicant's spouse, country conditions documentation on Ecuador, a letter from the applicant's spouse, a letter from the applicant, photographs and phone records for the applicant and his spouse, biographical information for the applicant and his spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(6)(C) of the Act, which provides, in pertinent part:

- (i) ...Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The U.S. Department of State determined that the applicant presented false documentation in order to procure a visitor visa to the United States in 2000. Specifically, it was determined that bank statements submitted by the applicant in connection with his nonimmigrant visa application in 2000 were fraudulent. The bank statements were relevant to the applicant's eligibility for a nonimmigrant visa. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through willful misrepresentation of a material fact. The applicant does not challenge his inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

Pursuant to 22 C.F.R. § 41.81, the applicant is eligible to apply for a waiver of inadmissibility as the fiancé of a U.S. citizen. A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which in this case is the applicant's U.S. citizen fiancée. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984);

Matter of Kim, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

The Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant states that the applicant’s fiancée will suffer from extreme hardship as a result of her being separated from the applicant. In particular, counsel states that the new evidence presented illustrates that the applicant’s fiancée is pregnant, “experiencing great difficulty with her pregnancy,” and has been diagnosed with adjustment disorder. Counsel for the applicant states that the applicant’s fiancée is “at risk for future heart attack or stroke” and that the news of the denial of the applicant’s waiver applicant led his fiancée to go to the emergency room with chest pains. A “Discharge Summary Report” from Seton Health – St. Mary’s Hospital, dated April 30, 2010, states that the applicant’s fiancée was admitted to the hospital with chest pains. The report states that the applicant’s fiancée’s chest pains resolved themselves and that the results of tests conducted were normal. A letter from [REDACTED], dated May 13, 2010, states that the applicant’s fiancée is under his care for obstetrics and has an “E.D.C” of November 25, 2010. The doctor did not indicate that the applicant’s fiancée was suffering from complications with her pregnancy or indicate that she needed any particular course of treatment or assistance. Lab results were submitted and interpreted by counsel to indicate a risk for gestational diabetes, however, the documents submitted were prepared for review by medical professionals or are otherwise indiscernible and do not contain a clear explanation of the current medical condition of the applicant’s fiancée. Absent an explanation in plain language from the treating physician of the

exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed based on laboratory results. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also indicates that the applicant's fiancée is suffering from "Adjustment Disorder with Mixed Anxiety and Depressed Mood." A psychological assessment by [REDACTED] Ph.D., states that the applicant's fiancée "will need extra support to be able to struggle with daily feelings of isolation and the emotionally draining experience of giving birth and being responsible for a child." [REDACTED] recommended that the applicant's fiancée engage in counseling during her pregnancy and after the birth of her child. [REDACTED], states that she has seen the applicant's fiancée intermittently for three years and that the applicant's fiancée has complained of depression that is getting progressively worse. [REDACTED] recommended that the applicant be allowed to enter to the United States to be with his fiancée during this time of her life where she "desperately needs him." She did not prescribe any course of therapy or treatment for the applicant's fiancée. Although the AAO respects the opinion of these medical professionals, and it is clear that the applicant's fiancée is suffering from emotional hardship as a result of the applicant's inadmissibility, there is no indication that the hardship rises to the level of extreme beyond what is normally experienced by individuals separated due to immigration violations. The applicant's fiancée did not present any evidence of financial or other hardship as a result of the applicant's inadmissibility. Although she states that she had to stop her community college studies at Schenectady Community College as a result of her inability to concentrate, she has not presented evidence of this. The evidence of record, when considered in the aggregate, does not indicate that the applicant's fiancée will suffer from extreme hardship as a result of separation from the applicant.

We must also consider whether the applicant's U.S. citizen fiancée would suffer extreme hardship should she relocate to Ecuador to reside with the applicant. The applicant's fiancée is a native of Ecuador who became a citizen of the United States through naturalization in 2007. She states that she cannot reside in Ecuador at this time due to the high crime and high unemployment rate in that country. Counsel for the applicant also states that the applicant's fiancée would suffer extreme hardship in Ecuador due to her "high-risk" pregnancy. The record, however, does not indicate that the applicant's fiancée was suffering from a high risk pregnancy or was in need of any particular course of treatment. Again, the AAO notes that the unsupported assertions of counsel are not evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; and *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Additionally, the applicant's fiancée states that the applicant has been mugged on his way to work and that he would not be able to support her in his income in Ecuador. She also states that she would be unable to support her parents as she presently does and she would be unable to repay debt that she owes in the United States, should she relocate to Ecuador. There is no evidence in the record to document any of the before mentioned facts. Although the applicant's assertions are relevant and have been taken into

consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the AAO notes that not being able to maintain one's present standard of living is not the type of hardship that rises to the level of extreme. Additionally, the applicant's future parents-in-law are not qualifying relatives, therefore, hardship to them would only be considered as it is illustrated to affect the applicant's fiancée. The record contains information from the U.S. Department of State concerning the conditions in Ecuador and the AAO takes note of the high incidence of crime in that country. The record, however, indicates that the applicant's fiancée has visited Ecuador on numerous occasions, she is a native of that country, obtained her education there, and speaks the language. Although the AAO notes the applicant's fiancée's difficult situation, the record does not establish that the hardships that she would face upon relocation to Ecuador rise to the level of “extreme” as contemplated by statute and case law.

The applicant's fiancée's concern over the applicant's immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme* hardship,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.