U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

DATE: NOV 2 8 2012 OFFICE: VIENNA, AUSTRIA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated April 15, 2011, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, but concedes the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Counsel also states that the evidence demonstrates that refusal of the applicant's admission to the United States will result in extreme hardship to the applicant's U.S. citizen spouse.

In support of the waiver application, the record includes, but is not limited to briefs by the applicant's counsel, biographical information for the applicant and his spouse, biographical information for the applicant and his spouse's child, a letter from the applicant's spouse's doctor in the United States, photographs of the applicant, his spouse, and their families, a letter from the applicant's spouse, letters from family members of the applicant's spouse, documentation of the applicant's employment in the United States, documentation submitted in support of the immediate relative petition, country conditions information for Romania, and documentation regarding 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 was found to be 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.

Section 212(a)(6)(C)(i) of the Act may be violated by committing fraud or willfully misrepresenting a material fact. *See Mwongera v. INS*, 187 F.3d 323, 330 (3rd Cir. 1999); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Fraud consists of "false representations of a material fact made with knowledge of its falsity and with intent to deceive." *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956. In the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009)(citing to *Witter v. I.N.S.*, 113 F.3d 549, 554 (5th Cir. 1997); *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, 22 I&N Dec. at 424-24. The "element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." 187 F.3d at 330.

The Field Office Director noted "it was found that fraud was involved on the part of" [redacted] in relation to an I-129 Petition for Nonimmigrant Worker submitted on the applicant's behalf while he was in the United States. Counsel states that the applicant did not commit fraud in regards to the I-129 petition, as the application was not submitted by the applicant. The AAO notes that the Form I-129 was not signed by the applicant. The record, however, reflects that the applicant made material misrepresentations in regards to his educational background to procure his J-1 visa, which he used to enter the United States. Those representations were material to the applicant's nonimmigrant intent and eligibility for the visa. On appeal, counsel states that the applicant did not misrepresent his educational background, however, no evidence was presented to support that assertion. It is the applicant's burden of proof to illustrate her eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa and admission to the United States through fraud or misrepresentation of a material fact. This is a permanent ground of inadmissibility.

Section 212(i) of the Act provides a waiver for section 212(a)(6)(C). That section 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.

The applicant is also inadmissible under 212(a)(9)(B)(i)(II) of the Act. The applicant was admitted to the United States on a J-1 visa on July 8, 2002 for duration of status to engage in temporary work/study with State Farm Insurance. It is not clear from the record that the applicant ever pursued his intended program. The applicant's presence in the United States without authorization was discovered, however, after investigations into fraud in two petitions filed on his behalf. The applicant was notified that he was being placed into removal proceedings on May 15,

2006. The applicant subsequently divorced his first spouse and married his current spouse, before departing the United States on June 30, 2008. Removal proceedings against the applicant were terminated subsequent to his departure from the United States. The fact that the applicant accrued one year or more of unlawful presence in the United States is not disputed. As a result of the applicant's unlawful presence, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of ten years from his departure from the United States on June 30, 2008.

Section 212(a)(9) of the Act provides, in pertinent part, that:

> (B) ALIENS UNLAWFULLY PRESENT.-
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
> ...
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> ...
> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under section 212(a)(9)(B)(v) of the Act. In this case, the applicant's qualifying relative is his U.S. citizen spouse. Hardship to the applicant or the applicant's U.S. citizen child will not be separately considered, except as it is shown to affect the applicant's spouse. If extreme hardship to his 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 deportation, 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, 885 (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).

However, though hardships may not be extreme when considered abstractly or individually, 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.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse has suffered from and will continue to suffer extreme hardship as a result of the applicant's inadmissibility. In regards to the hardship that the applicant's spouse would suffer if she were to reside in the United States separated from the applicant, counsel states that the aggregate hardship to the applicant's

spouse would rise to the level of extreme. A letter in the record from dated September 24, 2010, states that the applicant's spouse "displayed signs of extreme anxiety and depression" due to her separation from the applicant after his departure from the United States in June 2008. He also states that the "extreme anxiety and depression" affected her well-being, and that the she was prescribed Zoloft and Xanax, "although they had little positive effect." In her statement, the applicant's spouse notes that she tried the medication for a few weeks. As a result of her depression from separation from the applicant, states that the applicant's spouse departed the United States in December 2008 to reside with the applicant in Romania. The AAO does not question credentials or his statement that he has provided medical care to the applicant's spouse since she was a child, however, his letter does not provide detail into the emotional effects of separation from the applicant on his spouse. Simply stating that the applicant's spouse exhibited a "stark change in demeanor" and "displayed signs of extreme anxiety and depression" does not indicate how the applicant's spouse's day to day life was affected by separation from the applicant.

The applicant's spouse states that she initially travelled with the applicant to Romania on June 30, 2008, for their religious wedding ceremony, which took place on July 19, 2008. She states that she returned to the United States one week later to continue her work as a bank teller. She states that she earned $1,200 per month, however, no documentation was submitted in the record concerning her income. The applicant's spouse also states that she was attending classes at Cuyahoga Community College but had to drop two classes because she could not concentrate as a result of the applicant's absence. Again, no documentation was submitted to support this assertion. The applicant's spouse's also stated that she lost her appetite and as a result, lost weight. The AAO notes that the applicant's spouse's weight loss was not noted to be medically significant by or any other medical professional. The applicant's spouse also states that she could not "keep up with the bills and was not able to pay the rent." She states that the applicant's car was repossessed. Again, no documentation was submitted to support those assertions. The record reflects that the applicant's spouse's rent was $610 per month, and there is no indication in the record why the applicant's spouse was unable to pay that rent based on her stated income of $1,200 per month. Although the applicant's spouse'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)). Similarly, 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).

Counsel also brings attention to the research study in the record titled "Experiments in Living: The Fatherless Family" dated September 2002 and prepared by and The Institute for

the Study of Civil Living. This report was prepared based primarily on research in Great Britain, however, the AAO notes its general findings. The applicant's spouse notes in a letter written before her child's birth that she would suffer extreme hardship if she were to move back to the United States to raise her child without the applicant. She states that she would not be able to work, as result of the need to care for the child. At the same time, she states that she is almost 100% certain that she would be able to obtain a job at a bank if she were to return to the United States. The record does not establish that the applicant's spouse would be able unable to support herself and her child in the United States. The AAO also notes that the applicant's spouse has supportive family members, including her parents and sister in the United States. The AAO recognizes the documentation submitted regarding the challenges of single parent families, but that information, considered in conjunction with the other evidence submitted in this case, does not establish that the applicant's spouse would suffer extreme hardship if she were to be separated from the applicant. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

The record reflects that the applicant's spouse relocated to Romania to reside with the applicant in December 2008. The record also reflects that she gave birth to the couple's first child on January 1, 2011 in Romania. Counsel states that the applicant's spouse is suffering from and will continue to suffer from extreme hardship as a result of her relocation. In her statement, the applicant's spouse states that she misses her family in the United States and that it has been difficult residing away from home. [redacted] the applicant's spouse's physician in the United States, states that based on a conversation with the applicant's spouse's mother, he believes that the applicant's spouse has been "displaying exaggerated depression-like characteristics overseas." Again, [redacted] did not offer any details as the symptoms experienced by the applicant's spouse. Based on this information it is not clear how the applicant's spouse's emotional health has been impacted by her relocation. In regards to her financial health, the applicant's spouse states that she and the applicant are not employed in Romania, but rather the applicant finished his degree with financial assistance from her parents. The applicant's spouse states that neither she nor the applicant have been able to find work, despite their efforts to apply for various positions. She states that they live in a 3 bedroom house with six adults and that they all survive off the applicant's father's pension. According to the applicant's spouse, the house has no running water or plumbing, and relies on wood for heat. She states that at times they have no money and no bread for dinner. No evidence was submitted to support these assertions. Again, 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 at 165. The AAO notes that the conditions described by the applicant's spouse in her statement appear to be very difficult, however, no evidence was submitted to support these assertions.

In regards to physical hardship as a result of relocation, the applicant's spouse, whose letter in the record was written before the birth of her child, states that she was particularly concerned about state of medical care in Romania "should our child have any type of condition that would warrant frequent doctor's visits." There is no indication in the record, however, that the applicant's spouse

has been affected negatively by the state of the medical system in Romania. The applicant's spouse's sister notes in her letter in the record that her daughter became ill in Romania and that she was "appalled" by the medical system, however, there is no indication how the applicant's spouse has been affected by problems with the medical system there. Again, 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 at 165.

The applicant's spouse and her family also note that the applicant's spouse has had to give up the pursuit of her education as a result of her relocation, however, as stated above, the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33*; *Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19 I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, as a result of the applicant's spouse's relocation to Romania, is beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-,* 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, 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 sections 212(i) and 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Perez,* 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch,* 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under sections 212(i) or 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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.