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



U.S. Citizenship
and Immigration
Services

DATE: **AUG 13 2013** OFFICE: ST. PAUL, MN

FILE: [REDACTED]

IN RE:

APPLICANT: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Bahamas who has resided in the United States since January 11, 2010, when she was admitted pursuant to a non-immigrant visa. She was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 19, 2012.

On appeal, counsel submits a brief in support as well as copies of USCIS decisions and correspondence. In the brief, counsel contends the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, because she did not intend to immigrate to the United States at the time of her admission. Counsel moreover asserts the Field Office Director failed to apply law as stated by the AAO, the Foreign Affairs Manual, and the Court of Appeals while determining whether extreme hardship exists.

The record includes, but is not limited to, the documents listed above, financial and medical documents, statements from the applicant and her spouse, letters from family, friends, employers, and other interested parties, articles on stress and depression, evidence on country conditions in the Bahamas, documentation of immigration and EEOC proceedings, evidence of birth, marriage, divorce, residence, and citizenship, and other applications and petitions. The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel also submits copies of other AAO decisions. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions submitted by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

Section 212(a)(6)(C) of the Act 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(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 101(a)(15) of the Act defines a nonimmigrant B-1/B-2 visitor as:

- (B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4. In the present case, the record reflects the applicant and her spouse married in the Bahamas on December 2, 2009. The record further reflects that on January 11, 2010 the applicant presented a non-immigrant B-2 visa to immigration officials to procure admission into the United States. According to an inspection report, the applicant stated she was going to visit friends in Sioux Falls, South Dakota for four weeks. The applicant did not indicate she had married a U.S. citizen two months before. The record further reflects that the applicant's spouse also traveled from the Bahamas to South Dakota on another flight that same day.

Counsel contends the applicant submitted enough evidence demonstrating she did not intend to remain in the United States after her admission, and that she decided to stay due to her spouse's personal and professional issues. In support, counsel submits documentation of the spouse's EEOC proceedings, as well as the spouse's statement. The proffered documents do indicate the applicant's spouse, an oral surgeon, was re-assigned on a 120 day detail to another hospital on January 25, 2010, and that he was informed in May 2010 that the U.S. Department of Health and Human Services intended to remove him from his position with their agency. However, although the applicant has shown her spouse had some professional difficulties after she was admitted to the United States, the record also demonstrates she intended to remain in the United States when she presented herself for inspection as a nonimmigrant on January 11, 2010. Despite assertions to the contrary, the record reflects when she was admitted to the United States the applicant did not mention she was married to a U.S. citizen, or that she intended to visit her spouse. Furthermore,

though the applicant claims she was traveling to visit friends who were tourists in the Bahamas, she does not affirm or provide evidence showing she did so. Instead, the applicant and her spouse indicate they travelled from the Bahamas to South Dakota on the same day, took separate flights, reunited in South Dakota when they both arrived, and have lived together since then. The applicant has provided no explanation for why she informed immigration officials she was visiting friends, subsequently traveled to South Dakota that same day, and immediately began living with her U.S. citizen spouse instead of visiting those friends.¹

Counsel additionally asserts the fact that the applicant never obtained a social security card demonstrates she did not intend to work in the United States. To the contrary, the applicant states she is currently self-employed in the United States as a graphic designer. Moreover, even if her failure to obtain a social security card indicates she does not intend to work in the United States, as counsel suggests, it does not necessarily follow that the applicant possessed non-immigrant intent when she applied for admission to the United States.² Counsel then correctly contends the Act allows for a nonimmigrant married spouse of a U.S. citizen to temporarily travel to the United States. However, even then an alien must demonstrate she resides in a foreign country which she has no present intention of abandoning, and is visiting the United States temporarily for business or temporarily for pleasure. *See section 101(a)(15)(B) of the Act.* In this case, although the applicant's representations to the inspecting official were sufficient to demonstrate her nonimmigrant intent at that time, her failure to disclose her recent marriage to a U.S. citizen, as well as the fact that her spouse was also travelling back to the United States on a different flight the same day, would have led the official to more closely examine her intentions.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Given the evidence of record, the AAO finds the applicant was an intending immigrant when she presented herself for admission as a nonimmigrant on January 11, 2010. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

¹ The applicant's Form G-325A, Biographic Information, indicates the applicant began living at the address she shares with her spouse in January 2010.

² The AAO moreover notes though a Bahamian official states in a letter that the applicant sought employment in the Bahamas, the letter does not indicate when she applied for that position. Without that information, the AAO is unable to find the applicant applied for jobs in the Bahamas at the same time she married a U.S. citizen, as counsel suggests.

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).

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse contends he will experience psychological and family-related hardship upon separation from the applicant. He explains their son [REDACTED] was born in August 2011, and that if [REDACTED] relocates to the Bahamas to remain with the applicant, the spouse will be devastated. The spouse asserts [REDACTED] was born with coombs, and he consequently needs both his parents and the medical care available in the United States. The spouse moreover asserts he suffers from psychological and emotional conditions, given his "type A" personality and the pressures of his employment as an oral surgeon. The spouse adds he went through great professional difficulties as a result of a relationship with a co-worker, and he was grateful for the applicant's emotional support at that time. Articles on stress and depression among dentists are submitted in support.

The spouse additionally claims he cannot relocate to the Bahamas with the applicant and their son. The applicant's spouse asserts although he was born in the Bahamas, and his parents still reside there, it would be impossible to build a dental surgery practice there given his age. The spouse explains he has been employed with the U.S. Department of Health and Human Services since 2003, and he has a six-figure savings and investment portfolio. He adds his ability to work in the Bahamas would be different, and the legal system would be inadequate to protect him and his practice. Articles on country conditions are submitted in support. The spouse moreover claims the applicant's family ties in the Bahamas would preclude support in that country. He further asserts he experiences racism in the Bahamas, as well as when he presents himself to U.S. Customs and Border Protection there.

The applicant has not submitted sufficient evidence to establish that her son [REDACTED] presently suffers from a medical condition which requires her assistance and cause her spouse to experience hardship. The record indicates at birth in 2011, [REDACTED] underwent a coombs test, was diagnosed with jaundice, and was subsequently discharged from the hospital. There is no indication or evidence, such as a letter from a treating physician, demonstrating the son needs continuing medical care for any condition, or that the applicant's presence is necessary for any medical treatment. Although the assertions on medical difficulties 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). Without supporting documentation on the son’s current medical condition, the AAO is unable to evaluate the hardship the spouse will experience due to health issues his son may have without the applicant present.

The AAO acknowledges the applicant’s spouse experiences some emotional difficulties due to the demands of his profession, and the possibility of separation from the applicant and their son. However, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical, emotional, or other impacts of separation on the applicant’s spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Bahamas without her spouse.

The applicant has demonstrated her spouse would experience extreme hardship upon relocation to the Bahamas, where he was born. The record reflects the spouse has been living in the United States for several years, and that he has built an oral surgery practice here. The record further reflects the spouse has been employed with the U.S. Department of Health and Human Services since 2003, and that a similar opportunity may not be available in the Bahamas. Moreover, although the spouse has some family ties in the Bahamas, he also has two adult children who live in the United States.

In light of the evidence of record on the spouse’s business and family ties, as well as some documentation indicating the spouse has experienced discrimination in the Bahamas, the AAO finds the applicant has established that her spouse’s difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant’s spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant’s spouse returns to the Bahamas.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to

relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 her U.S. Citizen spouse 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 the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.