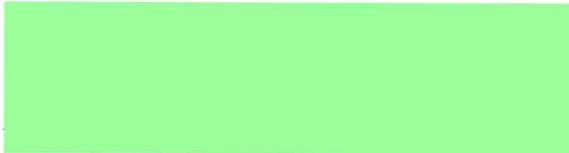
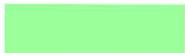




(b)(6)



DATE: **MAR 12 2013** OFFICE: SANTO DOMINGO FILE: 

IN RE: 

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 in accordance with the instructions on 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, Santo Domingo, Dominican Republic. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of the Dominican Republic 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), due to her procurement of admission to the United States using a passport and visa issued in the name of another individual. 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 her U.S. citizen spouse.

In a decision dated September 1, 2010, the Field Office Director concluded that the applicant did not meet her burden of proof to illustrate that her U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. On August 1, the AAO dismissed the applicant's appeal of that decision.

On motion, counsel states that factors not previously presented and new evidence demonstrate that the hardship to the applicant's U.S. citizen spouse rises to the level extreme.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In support of the waiver application, the record includes, but is not limited to statements from the applicant's spouse, biographical information for the applicant, her spouse, and their children, letters concerning the medical and psychological health of the applicant's children, limited federal tax returns for the applicant's spouse, and documentation concerning the applicant's criminal and 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)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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.

The applicant states that she was admitted to the United States on or about August 23, 2002 using a passport from the Dominican Republic and a B2 visa, both bearing the name of another individual. The applicant states that she remained unlawfully in the United States until November 2009. The applicant did not accrue unlawful presence during the period of time that her application for adjustment of status application was pending, from July 27, 2007 until January 11, 2008; however, the record demonstrates that she accrued one year or more of unlawful presence before and after that period of time and is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of ten years from her departure from the United States, as a result of this ground of inadmissibility. *See Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, et al., Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 312(a)(9)(C)(i)(I) of the Act, dated May 6, 2009.* The applicant does not contest this finding of inadmissibility on appeal.

Also, as a result of the applicant's use of fraud or material misrepresentation in order to gain admission to the United States, the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act 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.

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. Hardship to the applicant or her children is not considered in section 212(a)(9)(B)(v) or 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record also indicates that on August 17, 2009, the applicant was arrested for Larceny over \$250, in violation of Massachusetts General Laws, Chapter 266 § 30(1) and Conspiracy in violation of Massachusetts General Laws, Chapter 274 § 7. A letter from Probation Officer [REDACTED] of the Trial Court of the Commonwealth in Framingham, MA dated November 16, 2009 indicates that the applicant participated in a pre-trial probation program. On motion, counsel submitted the final disposition for the applicant's arrest, which indicates that the charges against the applicant were dismissed on August 19, 2010 at the recommendation of the probation department after a year of pretrial probation pursuant to Massachusetts General Laws, Chapter 276 § 87. The final disposition indicates that the applicant completed 25 hours of community service and was restricted from accessing the mall where the arrest took place. The AAO does not need to make a determination in regards to the applicant's admissibility in regards to section 212(a)(2)(A)(i)(I) of the Act, as the applicant is separately inadmissible under sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act.

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 motion, counsel for the applicant states that financial records not previously submitted illustrate that the applicant's spouse “is in a very strained financial condition” as a result of his need to take care of his children without the support of the applicant. Counsel also states that the applicant's spouse is suffering from mental anguish as a result of the physical and emotional condition of his children. In support of those statements, counsel submitted an affidavit from the

applicant's spouse speaking to his mental and financial hardship. In regards to his financial hardship, the applicant's spouse states that he has \$69,930.00 worth of debt. Additionally, the applicant's spouse continues to state that he is suffering from financial hardship due to the need to maintain two households, one in the United States and the other in the Dominican Republic, in addition to paying for travel to the Dominican Republic for himself and his children. The record, however, does not contain any documentation regarding the applicant's current spouse's financial situation, his expenses or the applicant's income and expenses in the Dominican Republic. No new evidence was submitted on motion in regards to the applicant's spouse's financial situation. The only financial records submitted by the applicant consist of tax returns from 2004-2006, a bank statement from 2006, and a letter from the applicant's spouse's employer dated June 12, 2007 stating that the applicant worked 40 hours a week, earning \$10.00 per hour. It is not possible to make a determination regarding the financial hardship to the applicant's spouse as a result of his separation from the applicant based on this limited information. Although the applicant's assertions regarding his financial and emotional hardship 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).

The applicant's spouse also states that he is suffering from emotional hardship as a result of raising his two young sons without the support of the applicant. The applicant's spouse states that he is the only individual that is able to care for his sons, aside from some support that he receives from his brother. On motion, the record was supplemented with documentation regarding the applicant's children, including an assessment dated July 25, 2012 stating that the applicant's son was not proficient in English. The record also contains two identical letters regarding the applicant's sons from [REDACTED] stating that the applicant's spouse reported to the Medical Social Worker there that the applicant's sons were displaying "considerable emotional distress, marked by anxiety, sleeplessness and despondent behavior" as a result of separation from their mother. The letter from the physician who examined the children stated that they were both in excellent health and up to date in immunizations and that their father "is very attentive to their needs and takes excellent care of the children." The AAO does not question the difficulty that the applicant's spouse may experience in raising two young children without their mother, however, he has not provided any independent evidence of the hardship that the situation is causing him personally. As stated in our previous decision, Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) or 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant's child will not

be separately considered, except as it may affect the applicant's spouse. Based on the lack of evidence in the record, it is not possible to determine the degree of hardship that the applicant's spouse would experience as a result of separation from the applicant. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure some hardship as a result of long-term separation from the applicant, the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of "extreme."

On motion, the applicant's spouse states that he would suffer from financial and emotional hardship if he were to relocate to the Dominican Republic to reside with the applicant. In his affidavit, the applicant's spouse states that he temporarily relocated to the Dominican Republic with his children, but that he was not able to find employment there, went into considerable debt, and suffered as a result of the medical problems experienced by his children. As stated above, however, the applicant's spouse did not provide any supporting documentation concerning his financial hardships. Moreover, there is no documentation in the record concerning any health problems suffered by the applicant's children while they resided in the Dominican Republic. As stated above, going on the 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. at 165. The applicant's spouse is a native of the Dominican Republic, presumably speaks Spanish, and has not documented the hardships that he would suffer if he were to relocate to that country. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to the Dominican Republic, would be 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(a)(9)(B)(v) and 212(i) 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 as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the

applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met this burden. Accordingly, the motion is granted and the underlying appeal is dismissed.

ORDER: The motion is granted and the waiver application remains denied.