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



U.S. Citizenship  
and Immigration  
Services

Date: OCT 07 2013

Office: TAMPA

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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tampa, Florida. 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 prior AAO decision will be affirmed.

The applicant is a native and a citizen of Macedonia 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her U.S. Citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 27, 2012.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated March 22, 2013. Consequently, the appeal was dismissed. *Id.*

On motion, applicant's counsel submits documentation regarding the Church of Scientology and the applicant's spouse's employment prospects in Macedonia, country-conditions information about Macedonia, an affidavit from the applicant's spouse's mother, and financial documentation. Counsel further requests reconsideration of the AAO decision, contending that the AAO made a mistake of law, and presents precedent decisions in support of that contention. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), 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 Service policy. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has submitted new documentary evidence to support her claim, and has stated reasons for reconsideration supported by precedent decisions, the motion to reopen and reconsider will be granted.

The record contains the following documentation: briefs filed by the applicant's attorney in support of the Forms I-290B, Notice of Appeal or Motion; statements from Church of Scientology practitioners in [REDACTED] Florida; materials about the Church of Scientology; country-conditions materials; statements from friends and family members; financial documents; and photographs. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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.

The evidence in the record indicates that the applicant entered the United States on June 1, 2011, using a B-2 non-immigrant visa. At the time of her entry, the Customs and Border Protection (CBP) officer believed that the applicant manifested an intent to remain in the United States, even though she sought admission with a non-immigrant visa. Based on this manifestation, the CBP officer admitted the applicant for one month only, until July 1, 2011; and he clearly indicated on the applicant's Form I-94 Arrival/Departure Record that there was to be no extension of the applicant's stay, no change of the applicant's status, and no adjustment of status. Despite these clear restrictions, the applicant proceeded to marry a U.S. citizen 23 days after her admission and then filed for adjustment of her status to lawful permanent resident.

On motion, counsel contends that the applicant has "supplied extensive evidence" that she did not misrepresent herself at the time she entered the United States. The record includes affidavits from the applicant and the applicant's spouse, wherein state that they did not have serious plans to marry when the applicant entered the United States on June 1, 2011, and that the reason that decided to marry was because the applicant's admission to the United States was restricted to one month and she needed more time to complete her religious training.

As noted in the previous AAO decision, the applicant and her spouse had a significant relationship prior to her return to the United States on June 1, 2011. Further evidence indicates that the applicant told the CBP officer upon her arrival on June 1, 2011, that her grandmother had purchased a condominium in Florida in the applicant's name. The statements by the applicant upon her arrival indicated her intent to remain in the United States, despite seeking admission as a non-immigrant.

Although the assertions of the applicant and the applicant's spouse 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 asserts that even if the applicant had a preconceived intent to remain in the United States, this intent "is not a bar to adjustment requiring a waiver," and she cites *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 1980) and U.S. Citizenship and Immigration Services Operating Instruction section 245.3. Contrary to counsel's contention, the authority on which she relies refers to the applicant's intent upon entering the United States as a discretionary factor and does not address inadmissibility. Only after an applicant has established eligibility to adjust status does the Secretary

consider whether the applicant merits a waiver of inadmissibility as a matter of discretion. The operating instruction and cases cited therein do not refer to the requirement that an applicant for adjustment of status found inadmissible apply for and receive a waiver of inadmissibility. An applicant for adjustment of status who has been found inadmissible under section 212(i) of the Act must show that the bar to admission imposes an extreme hardship on a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996). In this particular case, the applicant has been found to be inadmissible under section 212(a)(6)(C)(i) of the Act, and, as such, requires a waiver under section 212(i) of the Act in order to overcome her inadmissibility.

Section 212(i) of the Act provides that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen husband is the only qualifying relative in this case. 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).

Thus, in order for the applicant to overcome her inadmissibility, she must establish the threshold requirement that the bar to admission would impose extreme hardship on a qualifying relative. Only when this threshold requirement is established would the Service assess whether a favorable exercise of discretion is warranted, and the holding in the case of *Matter of Cavazos* would become relevant.

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, 1293 (9<sup>th</sup> Cir. 1993), (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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.

Concerning whether the applicant's spouse would experience extreme hardship if he were to relocate to Macedonia to be with the applicant, counsel contends that her spouse would be unable to practice

his profession as an auditor for the Church of Scientology and freely practice his religion; he would be separated from his family and community; he does not speak Macedonian and would have difficulty integrating into a foreign culture; he would face unemployment in Macedonia; and his relocation would cause hardship to his mother and child.

The record indicates that the applicant's spouse was born in the United States and has resided in the United States since birth. The applicant's spouse is unfamiliar with the language and customs of Macedonia. The evidence submitted reflects the applicant's spouse's close community and family ties in the United States. Moreover, counsel's claims about the applicant's spouse's employment prospects are corroborated by country-conditions information regarding the unemployment rate in Macedonia. In addition, evidence shows that the applicant's spouse would be unable to practice his profession as an auditor for the Church of Scientology in Macedonia because he is unable to speak the language.

In addition, counsel claims that if the applicant's spouse were to relocate to Macedonia, this would cause hardships to his mother. Counsel states that the applicant's mother needs financial support, which is currently being provided by the applicant. Counsel further states that if the applicant's spouse is in Macedonia, he will not be able to meet his obligations to his mother, which will affect him mentally and emotionally.

Thus, the record indicates that the applicant's spouse would suffer financial, professional, and emotional hardships if he were to relocate to Macedonia. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if the applicant's spouse were to relocate to Macedonia to be with the applicant.

With respect to whether the applicant's qualifying relative will experience extreme hardship if he remains in the United States, counsel asserts that the applicant's spouse will suffer financial hardship if the applicant's waiver is not approved. Counsel states that the applicant's spouse is employed by the Church of Scientology and that he is currently under contract for a period of five years. However, no evidence in the record corroborates this claim or shows his terms of employment. The applicant therefore has not met her burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165. The record includes a letter from the applicant's spouse dated June 29, 2011, stating that he was self-employed as a web designer, and expected to earn \$11,500 in 2011; and a copy of his 2010 federal income tax returns indicates an adjusted gross income of \$9,309.24. However, as noted, the record lacks evidence of the current income of the applicant's spouse. The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence.

Counsel further contends that the applicant's spouse will suffer mental and emotional hardships if the applicant's wavier application is not approved. As the applicant's spouse's religious beliefs do not allow him to seek or receive treatment from mental-health professionals, the only evidence in the record that the applicant's spouse would suffer emotional hardship if separated from the applicant are statements by the applicant's spouse and his mother. Although these 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. at 177. The record is insufficient to show that the potential emotional impact on the applicant's spouse due to separation from the applicant would be extreme, atypical, or unique compared to others separated from a spouse.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the financial and emotional impact of such a separation. Considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

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 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 motion to reopen is granted and the prior AAO decision is affirmed.