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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: JUN 24 2014 Office: NEW YORK, NY

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)

ON BEHALF OF APPLICANT:  
[REDACTED]

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 District Director, New York, New York, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on a motion to reconsider. The motion will be dismissed.

The applicant is a native and citizen of Guyana who 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 attempted to procure admission to the United States through fraud or a material misrepresentation. The applicant is the spouse of a U.S. citizen and the son of a lawful permanent resident mother. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision, dated April 23, 2013, the district director found that the applicant had failed to establish that his wife or mother would suffer extreme hardship as a result of his inadmissibility.

On appeal, counsel stated that considering the high crime rate in Guyana, the applicant's mother's medical conditions, and the applicant's spouse's family and community ties to the United States, the record established that the applicant's spouse and mother were suffering extreme hardship as a result of the applicant's inadmissibility. With the appeal, counsel submitted an unsigned affidavit from the applicant's spouse, country conditions information for Guyana, and medical documentation for the applicant's mother.

In our decision, dated January 24, 2014, we found that the record did not establish that the applicant's mother and/or spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Specifically, we found that in regards to the applicant's spouse, the record failed to indicate how separation was affecting the applicant's marriage considering that the applicant and his spouse had been separated for the last 12 years prior to filing the waiver application. In regards to the applicant's mother, the record failed to establish that the applicant's mother required the care of her son to maintain her wellbeing and the record contained no statement from the applicant's mother. Finally, the country conditions information failed to show the effect life in Guyana would have had on someone of the applicant's mother and/or spouse's health, income, and education level. We dismissed the appeal accordingly.

On motion, counsel asserts that our previous decision was incorrect based on raising an unreasonably high bar for interpretation of applicable law and based on current U.S. Citizenship and Immigration Services' policy. She asks that the applicant's case be reconsidered.

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 Service 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).

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.

The record reflects that on May 12, 2006, the applicant attempted to enter the United States in Fort Lauderdale, Florida by presenting false documentation for admission. 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 a material misrepresentation. The applicant's qualifying relatives are his U.S. citizen spouse and his lawful permanent resident mother.

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).

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 of hardship is limited to three documents, which include: hospital discharge instructions, dated February 11, 2013, concerning the health of the applicant's mother; an unsigned statement from the applicant's spouse; and a country report on conditions in Guyana from the U.S. Department of State, Bureau of Diplomatic Security. On motion, counsel resubmits the hospital discharge instructions and country condition report. Because the applicant's spouse's statement is not signed, it will be given little evidentiary weight. The record, based on the other documents submitted, establishes that the applicant's mother sought hospital care for chest pains, the cause of which was not known. The discharge instructions indicate that the applicant's spouse has been or is prescribed medication for pain relief, stomach acid, high cholesterol, high blood pressure, and diabetes. The instructions also indicate that she should exercise, eat healthfully, sleep more, minimize stress, and avoid smoking, caffeine, and alcohol. We recognize that the record shows that the applicant's mother has a medical condition related to cardiovascular problems and diabetes. However, the

record currently fails to show that she cannot maintain her wellbeing on her own or, if she is unable to care for herself, that she is unable to obtain care without the applicant in the United States. The record fails to include statements from the applicant, the applicant's mother, and/or the applicant's brother, who is currently residing in the United States. Counsel asserts that statements from family are not given great evidentiary weight in these proceeding. That assertion is incorrect. The assertions of the applicant and/or his qualifying relatives are relevant evidence and would be considered. When these statements are coupled with supporting documentation, these assertions can be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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] . . ."). The record contains no details concerning how the applicant's mother's needs are being met and how separation from the applicant is affecting these needs. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Thus, the record does not establish that the applicant's mother is suffering extreme hardship as a result of separation.

In regards to relocation and country conditions in Guyana, the record indicates that violent crime is a serious problem in Guyana, with the murder rate being three times higher than in the United States. The country report indicates that there is limited police presence in the country, with police not responding to emergency phone calls. Moreover, the report indicates that medical care does not meet U.S. standards, that in medical emergencies medical evacuation would be necessary, and that only some prescription medications are available. Given the high crime rate in Guyana, the inability of the police to address this crime, the poor medical care in the country, and the applicant's mother's medical conditions, the record establishes that she would suffer extreme hardship upon relocation.

Unlike a removal hearing in which the government bears the burden of establishing a respondent's removability, the burden of proof in the present proceedings is on the applicant to establish his/her admissibility for admission to the United States "to the satisfaction of the Attorney General [Secretary of Homeland Security]." *See* Section 291 of the Act, 8 U.S.C. § 1361.

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(s) 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 record establishes that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse or lawful permanent resident mother 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed.