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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 2 4 2015

FILE #: [redacted] consolidated therein)
APPLICATION RECEIPT #: [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:

[redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Tampa, Florida, Field Office (the director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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), for attempting to procure admission into the country on December 21, 1993, by presenting a Puerto Rico birth certificate and Social Security card under another name. The applicant's mother and father are U.S. lawful permanent residents, and the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, that her U.S. citizen brother filed on her behalf. 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 parents and family.

The director determined that the applicant failed to establish that extreme hardship would be imposed on the applicant's parents if they remained in the United States separated from the applicant, or if they relocated with the applicant to the Dominican Republic. The application was denied accordingly. *See Decision of Field Office Director,* dated August 28, 2014.

On appeal the applicant asserts, through counsel, that the evidence in the record demonstrates that her parents will experience extreme financial, medical and emotional hardship if she is denied admission into the United States.

The record contains, but is not limited to, statements and affidavits from the applicant, her parents, and her brother and sister-in-law; medical documentation; and country-condition information for the Dominican Republic. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general. 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.
>
> (ii) Falsely claiming citizenship.
>
> (I) In general. Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . or any other Federal or State law is inadmissible
>
> . . . .
>
> (iii) Waiver authorized. - For provision authorizing waiver of clause (i), see subsection (i).

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

> (1) The Attorney General [now Secretary, Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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.

Inadmissibility under section 212(a)(6)(C)(ii)(I) of the Act applies if a false representation of U.S. citizenship occurs on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. There is no statutory waiver available for the ground of inadmissibility arising under section 212(a)(6)(C)(ii)(I) of the Act.

In the present matter, the record reflects that the applicant attempted to procure admission into the United States on December 21, 1993, by representing herself as a U.S. citizen, using a Puerto Rico birth certificate and Social Security card under the name Because the applicant sought admission into the country as a U.S. citizen prior to the September 30, 1996 IIRIRA enactment date, the applicant is not inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

The applicant is, however, inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking admission by fraud or willful misrepresentation of a material fact. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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, in this case the applicant's lawful permanent resident mother and father. 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-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The record contains references to hardship the applicant's brother and his family would experience, as well as hardship the applicant's fiancé and children would experience, if her waiver application were denied. It is noted that Congress did not include hardship to an alien's siblings and their family, or an alien's fiancé or children as factors to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's parents are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's other family members and fiancé will not be separately considered, except as it may affect the applicant's parents.

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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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.

Through counsel, the applicant asserts on appeal that her parents will experience extreme medical, emotional, and financial hardship if she is denied admission into the country and they remain here. The record contains statements and affidavits from the applicant, her parents, and her brother and sister-in-law; and medical documentation for her father.

The applicant states on her Form I-601 that she takes her parents to doctor's appointments, cares for their health and their home, and is "the only person that is able to care for them." The applicant's mother and father state in a joint letter, dated December 22, 2013, that the applicant's mother has osteoporosis, her father has high blood pressure, and that both can barely walk. The letter states also that the applicant takes her parents to all of their doctor's appointments, distributes their medications, and that she tends to their needs, including helping them bathe and cooking for them.

The applicant's father states, in an affidavit dated October 20, 2014, that he is 83 years old, that he was diagnosed with prostate cancer five years ago, and that "at the moment [the applicant] is the only person [he has] in the United States to take care of [him]." He states that the applicant takes him to all of his "doctor's appointments, chemotherapy follow ups and others," that he lives in her house, and that she supports him financially. He also states that he cannot do anything by himself and that it would be very difficult to cope with his disease without her help. The applicant's brother states in an undated letter that his father "was diagnosed with cancer and [the applicant] is taking care of him."[1] The applicant submits medical evidence concerning her father's medications and medical problems that corroborates assertions made about his conditions.

According to a March 19, 2015, letter from the applicant's father's doctor, the applicant accompanies her father "to all of his cardiology appointments to help manage his hypertension and coronary artery disease." The letter states that the applicant also manages her father's medications and doctor appointments, that she is the sole caretaker for her father, and that her presence "has been imperative to the care of her father." A September 17, 2014, letter from another doctor states that the applicant is her father's caregiver and that the applicant currently resides with her father and is responsible for assisting him "with all medical care." A third doctor's letter, dated September 14, 2014, reflects that the applicant's father was scheduled for radiation treatment for two months between September 15, 2014 and November 14, 2014, and that the applicant planned to accompany him to daily sessions.

[1] The applicant's brother also states that the applicant helped his family when his daughter was undergoing a kidney transplant. In addition, the record contains a second undated letter from the applicant's brother and sister-in-law stating that the applicant has helped them take care of their daughter. These claims do not, however, address or discuss hardship that the applicant's parents would experience if the applicant is denied admission.

The applicant's mother states in an affidavit dated October 21, 2014, that she is years old, that she has health problems, and that "at the moment [the applicant] is the only person [she has] in the United States to take [her] to all [of her] doctor's appointments" and to purchase medication. She states that her life without the applicant would be "very difficult in the United States." She states further that she receives all her support from the applicant, lives in the applicant's house, and that the applicant pays for all of her living expenses.

Although the applicant's mother claims to suffer from health problems and to rely on the applicant for medical and other care, the applicant submits no corroborative evidence demonstrating that her mother has health problems. In addition, the record lacks evidence, other than statements, demonstrating that the applicant's mother is physically or medically dependent on the applicant. Further, although the assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

The evidence in the record also is insufficient to establish that the applicant's father would experience medical hardship if the applicant was denied admission and he remained in the United States. The evidence reflects that the applicant brings her father to doctor's appointments related to his hypertension and coronary disease and that she helps him manage his medications. Nevertheless, the evidence does not clarify the type and level of support the applicant's father now requires. Furthermore, the evidence does not demonstrate that her other family members cannot provide care to their father. Counsel indicates in the appeal brief that the applicant's brother is unable to care for his parents because he lives in Florida and must take care of his own family, including a sick child; however neither the applicant, her brother, nor the applicant's parents make this claim in their statements, and the record lacks supporting evidence addressing the applicant's brother and his family's ability to care for their father. The unsupported assertions of counsel do not constitute evidence. *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). Moreover, the record does not demonstrate that the applicant's mother cannot assist and care for the applicant's father. As discussed above, the record lacks evidence to corroborate assertions that the applicant's mother suffers from health conditions. The record also lacks any evidence indicating that she would be unable to provide care to the applicant's father.

The applicant also provides no evidence to corroborate claims that her parents depend on her financially and for their housing. The record contains no income, earnings, or expense evidence for the applicant or her parents. The record also lacks evidence establishing that the applicant owns or rents a home and that her parents live with her.

We recognize that the applicant's parents will experience certain hardships as a result of separation from the applicant. Nevertheless, the evidence in the record does not establish that their situation, if they remain in the United States, is atypical to individuals separated as a result of removal or inadmissibility, such that it rises to the level of extreme hardship. Overall, considering the evidence of medical, emotional, and financial hardship in the aggregate, the record contains

insufficient evidence to establish that the applicant's parents would suffer extreme hardship if the applicant were denied admission and they remained in the United States.

The applicant also has not established that her parents would experience extreme hardship if they moved with her to the Dominican Republic. Counsel asserts on appeal that "the entire family lives, works, goes to school, and plans to permanently reside in the United States;" and that the applicant's parents moved to the United States in 2006, have no family ties outside of the United States, and have "built their home" and "established a permanent safe and stable environment for themselves here." Counsel also indicates that the health care system is inferior in the Dominican Republic, and that the applicant's parents "would experience extreme emotional suffering and loss if forced to leave their home here in the United States."

Counsel's assertions are unsupported by the record and, as noted above, do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2. The applicant and her parents do not address hardship they would suffer if they relocated with the applicant to the Dominican Republic. The record reflects that the applicant's parents are natives of the Dominican Republic, that they lived in the Dominican Republic until 2006, and that they are familiar with the language, customs, and culture in the country. In addition, the country-condition evidence contained in the record is general and does not demonstrate that the applicant's parents would be unable to obtain healthcare in the Dominican Republic, or that the applicant's parents would suffer economic, financial or other hardship beyond that normally experienced upon relocation if they moved with the applicant to the Dominican Republic.

Although concern and anxiety by the applicant's parents over the applicant's immigration status is neither doubted nor minimized, Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship 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 section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. *See e.g., Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996). In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's parents, considered in the aggregate, rise beyond the common results of inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to her U.S. lawful permanent resident parents, as required under section 212(i) of the Act.

Counsel states on appeal that we should consider, as special factors in the discretionary analysis, that the applicant's fiancé and children would face hardship being apart from her. It is noted that the record lacks documentation to establish the claimed identity and relationships. However,

having found the applicant ineligible for relief, we find no purpose would be served in discussing 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.