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

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: SEP 2 9 2011 OFFICE: NEW YORK CITY, NEW YORK 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 PETITIONER:

RICHARD TOSCANO, ESQ.
P.O. BOX 630006
BRONX, NY 10463

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of India who has resided in the United States since December 12, 1997, when he was admitted to the United States pursuant to a grant of advance parole. The record reflects the applicant previously entered the United States as a crewman in October 1990, and deserted his vessel soon thereafter. The record further reflects the applicant presented a fraudulent marriage certificate in order to gain immigration benefits. He was thus 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 sought to procure a benefit under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 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 his U.S. Citizen spouse.

The Field Office Director concluded that the applicant previously presented a fraudulent marriage certificate in an attempt to gain an immigration benefit, denied doing so in several interviews with USCIS, failed to provide sufficient evidence of extreme hardship to a qualifying relative, and denied the application accordingly. *See Decision of Field Office Director* dated March 26, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal. Therein, counsel alleges contrary to the Field Office Director's decision, the applicant "clearly has established extreme hardship to his wife." *Brief in support of appeal,* April 20, 2009. Counsel explains applicant's spouse "has no legal status, language skills, no profession, skill or prior work experience to fall back on if she goes to India, which is clearly economically and politically a third world nation." *Id.* Counsel also contends if the applicant's spouse were to "stay in the United States without her husband [it would constitute] great hardship in itself – economically, emotionally, and psychologically." *Id.* No supporting documents were submitted with the appeal.

The record includes, but is not limited, to, a brief in support of appeal, declarations from the applicant and his spouse, marriage, divorce, birth, and naturalization certificates, and documentation of the applicant's other immigration applications and petitions. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present case, the record reflects that in 2004, the applicant filed a Form I-130, Petition for Alien Relative, as well as a Form I-485, Application to Register Permanent Residence or Adjust Status, with a certificate showing his marriage to '[redacted]' a purported U.S. Citizen. The applicant and [redacted] failed to appear for an interview with the Service, and the applications were denied. Upon filing a second Form I-130 and Form I-485 with a certificate of his marriage to [redacted] the applicant claimed he learned about the first set of applications only then, and that the first marriage was "a complete fabrication and [he is] an innocent victim of a fraud perpetrated upon [him], and subsequently upon [the legacy] Immigration and Naturalization Service." *Declaration of applicant,* December 5, 2007. The applicant further claimed "not only did [he] never marry [redacted], but [he] never signed, or agreed to sign any immigration applications that were based upon [his] purported marriage to that individual." *Declaration of applicant,* December 5, 2007. Despite the applicant's attestations regarding his intent, it is noted intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Regardless, the applicant's explanation is unpersuasive. Records reveal that the applicant's signature is on the initial Form I-485, Form I-130, the Form G-325, Biographic Information, and Form I-693, Medical Examination of Aliens Seeking Adjustment of Status. The record also reflects his photos and passport copies are attached to the 2004 submission.

Section 204(c) of the Act provides that:

> [N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . .by reason of a marriage determined by the Attorney General [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(ii) states:

> Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy,

> regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

In the present matter, the AAO does not find the record to contain evidence that the applicant previously entered into or attempted or conspired to enter into a fraudulent marriage. While the applicant submitted fraudulent documentation to establish a 1993 marriage to a U.S. citizen, that marriage was a fiction, an invention of the fraudulent documents he submitted.

The Board of Immigration Appeals (BIA) in *Matter of Concepcion*, 16 I&N Dec. 10 (BIA 1976) and *Matter of Anselmo*, 16 I&N Dec. 152 (BIA 1977) found that where no marriage has taken place in connection with the filing of a prior immediate relative petition, section 204(c) is not applicable. We note that both decisions were issued prior to the amendment of section 204(c) by the Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537, which added subsection (2), but find the holdings articulated in *Concepcion* and *Anselmo* – that a fictitious marriage is not marriage fraud under section 204(c) of the Act – to be relevant to the case before us. The BIA has determined that to constitute marriage fraud there must be evidence in the record to indicate that an alien previously conspired to enter into a fraudulent marriage. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988). Marriage fraud has been found in cases where the record includes an admission by the beneficiary or the former spouse that he or she colluded to evade U.S. immigration laws, where the former spouse was paid to marry the beneficiary, where the marriage was never consummated, where the spouses never cohabited and where the spouses never presented themselves to family and friends as being married. See *Ghaly v. INS*, 48 F.3d 1426 (7th Cir. 1995; *Salas-Velazquez v. INS,* 34 F.2d 705 (9th Cir. 1994); *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975).

In the present case, the record fails to indicate either that the applicant married the petitioner of the first Form I-130 benefitting him or that he attempted or conspired to do so. It is noted that the applicant submitted a letter showing he was never married to [redacted] *See letter from the* [redacted] December 8, 2008. Therein, the clerk's office confirms "the above-referenced certificate of marriage [to [redacted] is not an authentic certificate. There is no indication of this marriage in our records." *Id.* As such, the Field Office Director correctly did not find the applicant inadmissible under section 204(c) of the Act, and the AAO will not revisit the Field Office Director's decision in this regard.

Despite this, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procured a benefit under the Act through fraud or misrepresentation. As set forth above, the applicant attempted to procure a benefit under the Act, namely, status as a lawful permanent resident, by submitting a false and fraudulent certificate showing marriage to a U.S. Citizen. The applicant's qualifying relative is his 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).

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*, 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.

Counsel for the applicant asserts there was ample "evidence of the hardship that his spouse would suffer." *Brief in support of appeal,* April 20, 2009. Further, counsel claims "the applicant has established prima facie eligibility for the relief sought in that he has a United States Citizen wife who is not Indian, does not speak Punjabi, the language of India in which the applicant is fluent nor does the wife have any legal status in India." *Id.* The applicant's spouse confirms she "cannot go to India because the culture is so vastly different from [hers] and because [she] would have no life comparable to what [she] has in the United States." *Declaration of applicant's spouse,* undated. Counsel also explains she has "no profession, skill, or prior work experience to fall back on if she goes to India, which is clearly economically and politically a third world nation." *Brief in support of appeal,* April 20, 2009.

Counsel for the applicant additionally contends the "political and economic conditions in India (a third world country) are constantly deteriorating. It is an extremely underdeveloped nation, in constant conflict with neighboring Pakistan... thus forcing the applicant's wife to stay in the United States without her husband is great hardship in itself – economically, emotionally, and psychologically." *Id.* The applicant's spouse corroborates, as "a result of [the applicant's] inability to secure legal status in the United States, [their] life has been in turmoil and [she has] been extremely depressed... [she finds herself] unable to concentrate, unable to sleep and barely able to function." *Declaration of applicant's spouse,* undated. She feels she "must seek professional [psychological] help because of the extreme nature of [their] difficulties." *Id.*

The applicant fails to submit evidence to substantiate counsel and his spouse's assertions. Although the applicant's spouse's 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. 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). Thus,

there is insufficient evidence of record to show extreme hardship to the applicant's spouse upon relocation to India or separation from the applicant.

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 his 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.