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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H2

DATE: **FEB 24 2012** Office: DENVER, CO

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[REDACTED]

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,

for Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II). The applicant is the son of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The Field Office Director found that the applicant failed to establish that his inadmissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated November 17, 2010.

On appeal, counsel states that the Field Office Director erred as a matter of fact and law in denying the Form I-601, as she failed to consider the medical, emotional and financial hardship the applicant's mother would experience as a result of his removal. *Form I-290B, Notice of Appeal or Motion*, dated December 20, 2010.

The evidence of record includes, but is not limited to: counsel's letter in support of the Form I-601 and the brief filed on appeal; a statement from the applicant's mother; documentation relating to the applicant's mother's financial obligations; country conditions information on Mexico; medical records concerning the applicant's mother; a settlement statement relating to an automobile accident in which the applicant's mother was injured; and court records relating to the applicant's conviction. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

....

(II) A violation (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

In the present case, the record reflects that on or about December 12, 2008, the applicant pled guilty to Possession of Drug Paraphernalia under Colorado Revised Statutes § 18-18-428(1) and was assessed a fine in the amount of \$100. The question of whether drug paraphernalia falls within the bar to admission set forth in section 212(a)(2)(A)(i)(II) of the Act was answered by the Board of Immigration Appeals (BIA) in [REDACTED]. In this precedent decision, the BIA held that possession of "a pipe for smoking marijuana is a crime within the scope of [section 212(a)(2)(A)(i)(II)] because drug paraphernalia relates to the drug with which it

is used.” 25 I&N Dec. at 120 (citation omitted). Therefore, the applicant’s conviction for drug paraphernalia bars his admission to the United States under section 212(a)(2)(A)(2)(i)(II) of the Act. The applicant does not contest this finding.

In [REDACTED] the BIA also held that “an alien who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act may apply for a section 212(h) waiver if he demonstrates by a preponderance of the evidence that the conduct that made him inadmissible was either ‘a single offense of simple possession of 30 grams or less of marijuana’ or an act that ‘relate[d] to’ such an offense,” such as the possession or use of drug paraphernalia. 25 I&N Dec. at 125. The BIA stated that in determining whether an offense relates to a simple possession of 30 grams or less of marijuana, a categorical inquiry of the offense would obviously be insufficient. *Id.* at 124 (“[I]t is hard to imagine any offense—apart from a few inchoate offenses—that could ‘relate to’ it categorically without actually *being* a simple marijuana possession offense.”). The BIA determined that it was the intent of Congress to have “a factual inquiry into whether an alien’s criminal conduct bore such a close relationship to the simple possession of a minimal quantity of marijuana that it should be treated with the same degree of forbearance under the immigration laws as the simple possession offense itself.” *Id.* at 124-25.

Pursuant to [REDACTED] we have, therefore, reviewed the factual circumstances behind the applicant’s conviction to determine whether it relates to a simple possession of 30 grams or less of marijuana. In the present case, the record indicates that at the time of his arrest for possession of drug paraphernalia, the applicant was also charged with possession of under one ounce (28.35 grams) of marijuana, a charge that was dismissed when the applicant pled guilty to possession of drug paraphernalia. Based on this evidence, the AAO finds the applicant to have demonstrated that his conviction was related to simple possession of 30 grams or less of marijuana and that he is eligible for waiver consideration under section 212(h) of the Act.

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

(h) The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) and of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

A waiver of inadmissibility under section 212(h) 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, parent or child of the applicant. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s mother 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. [REDACTED]

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 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 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 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to the question of whether the applicant in the present case has established that his inadmissibility under section 212(a)(2)(A)(i)(II) of the Act would result in extreme hardship for his U.S. citizen mother.

On appeal, counsel contends that the applicant's mother's family ties are to the United States, where she has two daughters and grandchildren, and that her only relative in Mexico is her elderly, ailing mother. Counsel also asserts that if the applicant's mother were to return to Mexico, she would have no employment opportunities, no home and would be at risk because of Mexico's high levels of drug-related violence, particularly in the State of [REDACTED] where her mother resides. Counsel further states that the applicant's mother is still experiencing daily pain as the result of a neck injury she suffered in a 2003 automobile accident; that she was diagnosed with dysplasia of the cervix in 2005 and, again, in 2006; and that she must be tested every six months to ensure that her condition does not result in cervical cancer. Counsel states that the applicant's mother has been dealing with depression for many years and that the possibility of cervical cancer pushed her into seeking treatment for her depression in 2005. She contends that if the applicant's mother relocated, her depression would worsen as her chances of receiving any type of mental health treatment would be minimal as mental health treatment in Mexico is scarce and, without employment, she would not be able to afford it.

In support of the applicant's claims regarding his mother's health, the record contains documentation that establishes the applicant's mother was involved in a 2003 automobile accident and received a settlement of \$17,000 for the injuries she sustained. Printouts of online Kaiser Permanent medical records for the applicant's mother from 2005-2006 establish that she was treated for cervical dysplasia in 2005 and 2006, for Gastroesophageal Reflux Disease in 2005; for depression and anemia in 2005; and depression and gastritis in 2006.

To establish conditions in Mexico, the applicant has submitted a copy of a travel warning for Mexico issued by the Department of State on September 10, 2010; an August 2006 article on the treatment of mental health problems in Mexico from the *American Journal of Psychiatry*; the section on Mexico from the 2005 *Mental Health Atlas*; a September 2000 report from Mental Disability Rights International on human rights and mental health in Mexico; online articles from the BBC and National Public Radio on mental health failures in Mexico in 2000 and 2002 respectively; and a 2007 World Health Organization report on the treatment of adolescents' mental health disorders in Mexico City.

While the submitted evidence does not support all of the preceding hardship claims, AAO has taken note of the 2010 travel warning for Mexico, which was subsequently updated on April 22, 2011, and which strongly advises U.S. citizens against travel to the northern border states of Mexico, including the State of [REDACTED] where the applicant's mother was born and where her own mother continues to reside. The updated travel warning indicates that the situation in [REDACTED] is of special concern and that [REDACTED] and the area southeast of that city, the general area of the applicant's mother's potential residence, should be avoided. However, the applicant has not demonstrated that his mother intends to relocate if his waiver application is denied, or that separation would result in extreme hardship to her.

To establish that separation from the applicant would result in extreme hardship for his mother, counsel states that the applicant is the "glue that holds [his mother] together, emotionally and financially" and that although he and his mother reside in different states, he makes frequent trips to visit her. Counsel also contends that the applicant's mother continues to struggle with depression, experiencing decreased energy, headaches, mild nausea and cries frequently without provocation, and that if the applicant is removed from the United States, she would not be able to cope

emotionally.

Counsel further asserts that the applicant's mother has not been employed since October 2009 and that she is financially dependent on the applicant, who provides her with \$1,200 each month. It is the applicant's support, counsel asserts, that allows his mother to meet her monthly expenses, including her mortgage payment and the money she sends to her mother in Mexico. Counsel states that although the applicant has two older sisters living in the United States, neither is in a position to help their mother financially. She states that one of the applicant's sisters is in removal proceedings and points to the insufficient Form I-864, Affidavit of Support Under Section 213A of the Act, submitted by the applicant's brother-in-law as proof that he and his wife would also be unable to support the applicant's mother. Counsel maintains that in light of the poor economy in Mexico, the applicant would be unable to obtain employment that would allow him to support his grandmother and mother from outside the United States. Without such financial assistance, counsel states that the applicant's mother would not only be unable to pay her bills but would be unable to afford the medical treatment she needs, including continued testing for cervical cancer every six months.

As previously indicated, the applicant has submitted documentation of his mother's injury in a 2003 automobile accident and her treatment in 2005-2006 for cervical dysplasia, Gastroesophageal Reflux Disease, depression, anemia, and gastritis to establish her physical and mental health. In support of the claims of his mother's financial dependence, the applicant provides a January 18, 2011 affidavit sworn by his mother who attests that the applicant provides her with \$1,200 a month to pay her bills and that she cannot depend on her two daughters for such assistance because they are married with families. She asks that her son be allowed to remain in the United States because she previously had cervical cancer and currently suffers from gastritis and kidney pain, which prevents her from working. Also included in the record are a January 29, 2010 money transfer in the amount of \$100, sent from the applicant's mother to her mother in Mexico; various utility bills, a cellular telephone bill; and a mortgage statement that establishes the applicant's mother pays a monthly mortgage in the amount of \$585.65.

On appeal, counsel asserts that the submitted medical documentation is sufficient to establish that the applicant's mother continues to suffer from depression and to require medical treatment, including testing for cervical cancer at six-month intervals. While the AAO accepts that the record establishes that the applicant's mother has previously had both physical and mental health problems, we do not find it to demonstrate the status of the applicant's mother's health at the time the applicant filed the appeal. In that the most recent medical evidence in the record is from 2006, it cannot establish the applicant's mother's mental and physical health in 2010. Accordingly, we are unable to determine the nature or extent of the impact that separation would have on the applicant's mother's mental health or conclude that she continues to require treatment for any of the medical conditions for which she was receiving treatment in 2005-2006.

The AAO also finds the record to contain insufficient evidence to establish that the applicant's mother would experience financial hardship if he is removed from the United States. While we acknowledge the applicant's mother's statement regarding her financial dependence on the applicant and note that the Form I-864 she submitted in support of the applicant's Form I-485, Application to Register Permanent Resident or Adjust Status, reports no household income, we find no documentary evidence in the record to establish that she is financially dependent on the applicant. There are no tax returns, bank statements, money orders or other evidence that offer proof that the

applicant is providing any financial support to his mother. Moreover, although counsel asserts that the applicant would be unable to earn sufficient income in Mexico to assist his mother financially, the record contains no documentary evidence on economic conditions in Mexico that would support counsel's claim. Likewise, the record lacks sufficient documentation demonstrating that the applicant's mother receives no support, and will receive no support, from other family members if the waiver application is denied. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

While the AAO acknowledges that the applicant's mother would experience hardship as a result of her separation from the applicant, we cannot, based on the evidence available in the record, reach a conclusion that the hardship factors claimed, even when considered in the aggregate, would result in extreme hardship for her.

The AAO 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. [REDACTED]. Furthermore, to relocate and suffer extreme hardship, where remaining in 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. [REDACTED]. 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 proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* 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.