



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **AUG 26 2013** OFFICE: PHILADELPHIA, PENNSYLVANIA [REDACTED]

IN RE: Applicant: [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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the waiver application. The applicant, through previous counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, and the prior AAO decision is affirmed.

The applicant is a native and citizen of The United Kingdom of Great Britain and Northern Ireland (Northern Ireland) who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of his last departure from the United States. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO dismissed the applicant's appeal and affirmed the Field Office Director's decision.

On motion, counsel contends the applicant is not inadmissible. Counsel also contends the documentary evidence satisfies the requirements set forth by the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) as: the applicant has "extensive ties to the United States, including his U.S. citizen spouse;" "the medical reports and testimony show that the applicant's U.S. [c]itizen spouse and her parents would suffer physical and emotional injuries" because of the applicant's inadmissibility; and the AAO failed to give proper weight to the financial documents in the record in evaluating the economic hardship the applicant's spouse would experience in his absence (*citing Matter of Marin*, 16 I&N Dec. 581 (BIA 1978)).

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). As the applicant has established reasons for reconsideration, the motion to reconsider will be granted.

The record includes, but is not limited to: briefs, a motion, and correspondence from previous and current counsel; letters of support; identity, psychological, medical, employment, and financial documents; photographs; criminal documents; and documents on conditions in Northern Ireland. The entire record was reviewed and considered in rendering a decision on motion.

Section 212(a)(9) of the Act provides, in relevant part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.- The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

...

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

The record reflects the applicant was admitted to the United States under the Visa Waiver program by presenting his Northern Ireland passport on November 17, 1998; not to exceed April 16, 1999. However, the applicant remained in the United States until he voluntarily departed on September 17, 2003. The record reflects he subsequently was admitted under the Visa Waiver program on November 1, 2003, and has remained to date. The AAO agreed with the Field Office Director's determination that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act as he accrued unlawful presence from April 1999 until September 2003, and he is seeking admission within 10 years of his departure on September 17, 2003.

On motion, counsel contends a waiver is not needed as "all prior unlawful presence was waived" upon the applicant's subsequent admission to the United States under the Visa Waiver program on November 1, 2003. The AAO finds counsel's assertion unpersuasive. Counsel does not provide any precedent decisions, and the AAO is unaware of any precedent decisions, that conclude all prior unlawful presence is waived upon a subsequent admission to the United States under the Visa Waiver program. The AAO notes that under section 212(a)(9)(C) of the Act, the statute includes

additional grounds of inadmissibility for aliens who reenter illegally. Therefore, there is no logic to counsel's assertion that a legal entry would eliminate inadmissibility under section 212(a)(9)(B) of the Act. Accordingly, the AAO finds the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and he requires a waiver under section 212(a)(9)(B)(v) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. Hardship to the applicant or his in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated 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-Morales*, 21 I&N Dec. 296, 301 (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 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. at 565. The factors include the presence of a lawful permanent resident or U.S. 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; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 (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.

On motion, counsel contends the documentary evidence in the record is sufficient to establish the applicant’s spouse would suffer extreme emotional and financial hardship in the applicant’s absence: “the AAO simply discredited the applicant’s [spouse’s] medical condition without any medical findings ... upon which [it] could have relied to reach its conclusion”; it “failed to give the tax records and the documents prepared by the [accountant] the proper [weight] in evaluating the economic hardship on [the] applicant’s spouse in [the applicant’s] absence”; and “the AAO discredited” the assistance the applicant provides to his mother and father-in-law, “and is of the opinion that the applicant needed medical authorization to assist his in-laws.” In its previous decision, the AAO acknowledged the findings made in the applicant’s spouse’s psychological evaluations concerning her diagnosis of Adjustment Disorder with Anxiety, but determined the evaluations do not establish the applicant’s spouse’s hardship would go beyond the common results of removal or inadmissibility. The AAO notes the motion does not include any additional evidence that the emotional problems the applicant’s spouse may experience upon separation from her family member are worse than others in a similar situation. Further, in its previous decision, the AAO acknowledged the record is sufficient to establish the applicant and his spouse’s current employment capacities and earnings as well as some of their financial obligations, but determined the record is insufficient to establish the applicant’s spouse would suffer extreme hardship because of their financial situation. The AAO notes the motion does not include any additional evidence of financial hardship, demonstrating the applicant’s spouse would be unable to meet her financial obligations in the applicant’s absence; only counsel’s general assertion, “the AAO failed to give the tax records and the documents prepared by the account[ant] the proper weigh[t] in evaluating the economic hardship on applicant’s spouse in his absence.” 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’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 AAO is thus unable to conclude that the applicant's spouse's emotional and economic hardship would go beyond that which is commonly expected.

Additionally, in its previous decision, the AAO determined the record is sufficient to establish the applicant's mother-in-law has received social security-related disability benefits since December 2010, and the applicant provides her and his father-in-law various types of assistance. However, the AAO also determined the record does not contain any discussion from the applicant's in-laws' treating physicians, indicating their various medical conditions and their inability to function in the applicant's absence. The AAO notes the motion does not include any additional evidence of the applicant's in-laws' medical conditions. Without more information concerning their medical conditions, the AAO is unable to determine the amount of assistance they need and the impact this would have on the applicant's spouse; the applicant's only qualifying relative.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

On motion, counsel contends the applicant's spouse would suffer extreme hardship upon relocating to Northern Ireland to be with the applicant as she "would have to leave her ailing parents."

Although the applicant's spouse may experience hardship upon relocating to Northern Ireland with the applicant, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO previously noted the record does not include any evidence of the applicant's spouse's parents' current physical or mental health other than what has been self-reported. As noted above, the motion does not include any additional evidence of the applicant's in-laws' medical conditions, demonstrating the assistance they would need and the impact this would have on the applicant's spouse; only counsel's general assertion the applicant's spouse "would have to leave her ailing parents." Additionally, the AAO previously noted the record does not include any evidence of labor or employment opportunities for Graphic Designers in Northern Ireland, and it determined that as Northern Ireland is English-speaking, the applicant's spouse should have reduced difficulty acclimating to its social system. The AAO notes the motion does not address employment opportunities for Graphics Designers in Northern Ireland or the impact its social system would have on the applicant's spouse. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings, and the assertions of counsel alone will not satisfy this burden. *Id.* Moreover, the AAO notes, in its latest travel advisory, the U.S. Department of State indicates, "The United Kingdom is politically stable and has a modern infrastructure, but shares with the rest of the world an increased threat of terrorist incidents of international origin, as well as the potential for isolated violence related to the political situation in Northern Ireland. Like the United States, the United Kingdom shares its national threat levels with the general public to keep everyone informed and explain the context for the various increased security measures that may be encountered." *Travel Advisory, The United Kingdom of*

Great Britain and Northern Ireland, issued May 16, 2013. The AAO is thus unable to conclude that the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience upon relocation to Northern Ireland to be with the applicant, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of relocation.

In this case, the record does not contain sufficient evidence to show the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) 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 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 is granted. The prior AAO decision is affirmed.