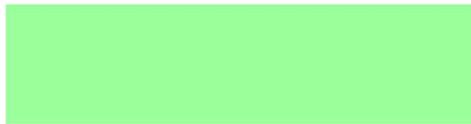




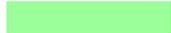
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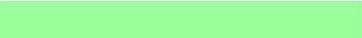


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Office: CHICAGO

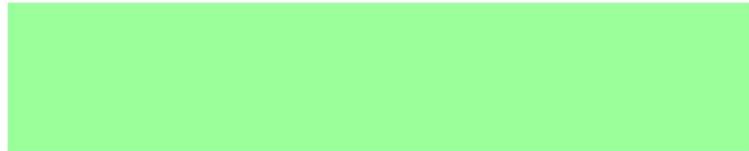
FILE: 

IN RE:

Applicant: 

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:



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 AAO inappropriately applied the law 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 with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Italy 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), for having been convicted of a crime involving a controlled substance. The applicant is the husband of a U.S. citizen. On August 9, 2010, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant 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 with his U.S. citizen wife.

In a decision dated June 12, 2012, the field office director found the applicant inadmissible for having been convicted of possession of cannabis/10 grams or less. The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 waiver application accordingly.

On appeal, counsel for the applicant states that the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to his U.S. citizen wife. Counsel avers that the evidence outlining financial and emotional difficulties demonstrates extreme hardship to the applicant's U.S. citizen wife and that the Chicago Office abused its discretion by failing to consider all favorable factors related to the waiver application.

The record includes, but is not limited to: counsel's brief; a hardship letter by the applicant's spouse; employment reference letters; financial documentation; copies of utility bills; family photographs; the applicant's wife's birth certificate; a marriage certificate; a copy of the applicant's passport; school records; documentation regarding the applicant's terminated removal proceeding; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

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

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
  - (II) a violation of (or 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.

The record reflects that on February 2, 2009, the applicant was convicted in the Circuit Court of [REDACTED] of possession of 2.5 to 10 grams of cannabis in violation of 720 ILCS 550/5(b). The applicant was sentenced to 12 months of probation and was fined. The field officer found that the applicant's conviction of possession of cannabis rendered him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II). The applicant does not contest inadmissibility resulting from this conviction on appeal.

Here, the record of conviction conclusively demonstrates that the applicant was found guilty of a controlled substance violation involving less than 10 grams of marijuana. Accordingly, the applicant is statutorily eligible for a section 212(h) waiver.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . .

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

Section 212(h) of the Act provides that a waiver of inadmissibility is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife.

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 the 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 is 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.

With regards to relocation to Italy, counsel states on appeal that the applicant's wife has close family ties to the United States, including her mother and sibling. Counsel indicates that the applicant's wife's father died in 2006 after being hit by a drunk driver, and that she is still undergoing a grieving process. In a letter dated July 28, 2010, the applicant's wife's mother states that her daughter has never lived in any other place and does not speak Italian. She asserts that her daughter has "just gotten her life back on track" and that she cannot imagine her daughter adjusting to life in Italy. In an affidavit dated July 26, 2010, the applicant's wife indicates that she would be unable to finish

school in Italy because she does not speak Italian. She asserts that her school credits would not transfer to an Italian institution and that she is now in the process of finishing her college degree. She states that she has lived her entire life in the United States and separation from her family would cause her great pain. The record reflects that the applicant is enrolled in the Human Services program of the [REDACTED] Illinois.

Here, the AAO acknowledges that the applicant's wife may experience some difficulties in Italy, as she will have to separate from her immediate family, including her mother and sibling. However, the record evidence does not establish her assertions regarding her inability to pursue a higher-education degree in Italy, or that she will be unable to secure employment in that country. There is no evidence in the record indicating that she will be unable to enroll in a college or university because of her immigration status or because of language barriers. Also, the record does not include documentary evidence supporting the applicant's wife's assertion that she will be unable to find employment in Italy because of her inability to speak the language. For example, the record does not include documentation concerning Italy's labor market, the language of instruction at Italian universities, work visa requirements in that country, or demonstrating that the applicant's wife would be unable to transfer her credits if she relocates to Italy and pursues a college degree. Although the applicant's wife's assertions 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. *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)).

In letters and statements from the applicant's wife and her family, it is asserted that the applicant's wife maintains a close and loving relationship with her family, and that she depends upon her mother and sibling for emotional support. The AAO acknowledges that the applicant's wife will experience emotional difficulties related to her family ties in the United States were she to relocate to Italy, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant's wife, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Based on the foregoing, the AAO finds that when considering the asserted emotional, financial and educational hardships collectively, the applicant has not fully demonstrated that the hardship his wife will experience as a result of relocation is more than the common result of removal or inadmissibility.

With regards to extreme hardship upon separation, counsel indicates that denial of admission would exacerbate the applicant's wife's depression and would result in extreme emotional and financial hardships. Counsel indicates that the applicant's wife's mental state is fragile as a consequence of

her father's death. Counsel states that the applicant's wife is being treated for depression and is being prescribed antidepressants. The record evidence includes copies of doctor prescriptions. However, the record does not include any medical assessments or reports of the applicant's wife's psychological state supporting counsel's claims regarding the applicant's wife's mental state. The AAO is thus unable to determine the severity of the applicant's wife's conditions or the effect that denial of the applicant's admission would have on his wife.

In her affidavit dated July 26, 2010, the applicant's wife indicates that the applicant has become her source of motivation and has encouraged her to complete her education. She asserts that separation would affect her and that her "motivation would be gone again." Counsel asserts on appeal that separation would have a financial impact on the applicant's wife. Counsel avers that the applicant and his wife recently bought a house and that the applicant's wife is dependent upon her husband for financial support. However, we note that there is no evidence in the record corroborating that counsel's assertions regarding the applicant's wife purchase of a house. 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 record does include copies of lease agreements and utility bills. However, as the applicant's wife does not address financial hardship upon separation, and the record evidence does not otherwise show the requisite hardship, the AAO cannot conclude that financial hardships she would experience if the applicant is denied admission would be extreme.

Here, the AAO finds that the hardships related to separation, as presented in this case, do not rise to the level of extreme hardship. The AAO acknowledges that the applicant's spouse would experience emotional difficulties as a result of separation from the applicant, but finds that the evidence does not demonstrate that this hardship is extreme. The record evidence indicates that the applicant's qualifying relative faces no greater hardship than the unfortunate but common difficulties arising whenever a spouse is denied admission. The BIA has long held that the common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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). U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Though the AAO is sympathetic to the applicant's wife's circumstances and her desire to reside in the United States with the applicant, the record evidence is insufficient to demonstrate extreme hardship to the applicant's wife. Put another way, while it is understood that the separation of qualifying relatives often results in emotional challenges, the applicant has not distinguished his wife's emotional hardship upon separation from him from that which is typically faced by the qualifying relatives of those deemed inadmissible.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests 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.