



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: JUN 21 2013

Office: KENDALL

[Redacted]

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the 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 AAO inappropriately applied the law in reaching its 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-290B, 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 any 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, Kendall, Florida, 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 under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse, U.S. citizen children, and U.S. citizen stepchildren.

On August 20, 2012, the Field Office Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider all of the facts when making their determination in regards to the applicant's waiver application. Counsel does not contest the applicant's inadmissibility on appeal.

In support of the waiver application, the record includes, but is not limited to: legal briefs from counsel; a letter from the applicant; a letter from the applicant's spouse; biographical information for the applicant, his spouse and their children from prior relationships; documentation regarding the applicant's stepchildren's medical history; educational documentation for the applicant's stepchildren; letters regarding the applicant's moral character; federal income tax returns for the applicant and his spouse; documentation of rent and lease; bank statements for the applicant and his spouse; country conditions information concerning Mexico; and documentation in connection with the applicant's criminal conviction and immigration 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 was reviewed and considered in rendering a decision on the appeal.

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

- (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 . . . is inadmissible.

The record shows that on [REDACTED] in the Circuit Court of the Eleventh Judicial Circuit in and for [REDACTED] Florida, the applicant pled guilty to Deriving Support from the Proceeds of Prostitution, in violation of Florida Statute § 796.05. Adjudication was deferred by the court and the applicant was sentenced to probation for a period of 18 months and was ordered to complete 100 hours of community service.

At the time of the applicant's conviction, Florida Statute § 796.05 stated:

Deriving support from the proceeds of prostitution

(1) It shall be unlawful for any person with reasonable belief or knowing another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution.

(2) Anyone violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

In *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965), the Board held that securing another for prostitution was an offense involving moral turpitude. The Board noted that activities that have not reached the level of "engaging" in prostitution may still be found to be crimes involving moral turpitude. *See, e.g., Matter of W-*, 4 I&N Dec. 401 (BIA 1951). As the applicant has not contested inadmissibility on appeal, and the record does not show the Field Office Director's determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

(i) ... the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

As 15 years have not passed since the activities that led to the applicant's conviction, a waiver of inadmissibility in his case, under section 212(h)(1)(B) 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, son, or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse, children, and step-children are qualifying relatives 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 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 deportation, 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, 885 (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 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.

The first qualifying relative is the applicant’s U.S. citizen spouse. Counsel states that the applicant’s spouse relies on the applicant for emotional and financial support and would suffer extreme hardship in his absence. The record indicates that the applicant and his spouse were married on May 21, 2010. The record also indicates that the applicant’s spouse is a native of Colombia who became a naturalized U.S. citizen on March 20, 2008. The applicant’s spouse has two children from a prior relationship and states that the father of those children was deported to Venezuela and does not provide support for the children. The AAO notes that 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 Obaighena*, 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). In regards to her emotional hardship, the applicant’s spouse states that her children needed a male figure in their life after losing their biological father and that

the applicant has fulfilled that role. She states that she is worried about the well-being of her children if they were to grow up without a father.

In regards to financial hardship, the applicant's spouse states that she would "barely be able to subsist and support [her] children if it wasn't for [the applicant.]" The record; however, does not provide a clear indication of the applicant's financial contribution to the household or his future earning potential. The 2011 Federal Income Tax Returns for the applicant and his spouse, as provided in the record, initially indicated an income of \$2,176 for the applicant and his spouse, in addition to \$10,605 in gambling proceeds. The applicant's spouse amended those returns, and the amended return indicates an adjusted gross income of \$23,671. The returns as submitted in the record are incomplete and there is no indication of the origin and to whom to attribute the additional reported income. The record does not contain W-2 forms or employment verification letters for either the applicant or his spouse. Bank statements and rental agreements for the applicant and his spouse do not indicate that the applicant's spouse is presently experiencing financial hardship and based on the limited information provided it is not possible to determine the degree of financial hardship the applicant's spouse would suffer in the applicant's absence. The evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case, that would result from separation from the applicant is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the applicant's stepchildren, counsel states that separation from the applicant would be "devastating" to the children. The record indicates that the two school age boys attend school where they both do well. The record also indicates that they have prepared numerous cards and letters regarding the applicant, indicating the important role that he plays in their life. Family photographs show the children together with the applicant. School records for the children indicate the applicant as one of numerous individuals who is authorized to pick the children up for school. The AAO notes that the applicant's spouse states that most of her family resides in the United States and it appears that many of those individuals are also listed as persons to whom the children may be released. A letter in the record from [REDACTED] dated May 11, 2012, states that both children suffer from "asthma, allergic rhinitis, and allergies." [REDACTED] states that the children require daily medication, aggressive treatments with exacerbations, and weekly visit for allergy shots. There is no indication by the doctor what role the applicant plays in caring for the children's health in regards to their asthma and allergies. Although the AAO notes that the applicant's stepchildren would likely endure hardship as a result of separation from the applicant, the record does not establish that the hardships they would face, considered in the aggregate, rise to the level of "extreme."

In regards to the applicant's biological children, counsel also states that separation from the applicant would be "devastating" for these children. Counsel states that the applicant provides child support for his children and visits them frequently. The applicant's spouse states the applicant spends as much time as possible with his children and "we are a big happy family when the six of us are together. The children get along very well." The record does not indicate the frequency with which the applicant has contact with his biological children. In regards to financial support, the record does not indicate court ordered support or the financial situation of the children's mother, but rather there are copies of money order receipts ranging in the amount of \$50 to \$125 from 2010 and 2011 with hand written notes stating "child support" written on the receipts. Based on this limited information, it is not possible to determine the degree of financial hardship that the applicant's

biological children would suffer in his absence. It is also not clear from the record that the applicant could not send that level of support from Mexico. Although the AAO notes that the applicant's biological children would likely endure hardship as a result of separation from the applicant, the record does not establish that the hardships they would face, considered in the aggregate, rise to the level of "extreme."

In regards to the hardship that the applicant's spouse would suffer if she were to relocate to Mexico, the AAO notes that the applicant's spouse was born in Colombia and does not appear to have any ties to Mexico. The applicant's spouse expressed fear of the violence and economic situation that she believes her family would face in Mexico. She states that she would certainly fear moving there, but would be even afraid to visit. The record indicates that the applicant was born in [REDACTED]. The record contains country condition information for Mexico and the AAO takes administrative note of the updated Travel Warning in regards to Mexico issued by the U.S. Department of State on November 20, 2012, noting in particular the dangerous nature of the highways in [REDACTED]. However, it is not demonstrated that the applicant must and will relocate to [REDACTED] or other areas within [REDACTED] and not all areas of Mexico are considered unsafe. Additionally, the applicant's spouse is a native of Colombia and there is no indication in the record why the family would not be able to relocate to that country. The record only indicates generalized worries felt by the applicant's spouse in regards to relocation. Again, it is the applicant's burden of proof in these proceedings. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel also states that the applicant's U.S. children and stepchildren would face extreme hardship if they were to relocate to Mexico. In regards to the applicant's biological information, not enough documentation was submitted to assess the hardship that the children would suffer. The record does not contain a custody agreement with the children's mother or any documentation regarding the hardship that they would suffer if they were to be separated from her. Moreover, there is no documentation concerning their education or health in the United States and how they would suffer if they were to relocate. Again, 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. at 165.

In regards to the applicant's stepchildren, the primary concerns expressed are the dangerous conditions in Mexico and the children's health issues. Although, as stated above, the record contains a letter from the children's physical concerning their asthma and allergies it is not clear from the record that the children would suffer from those conditions in Mexico and if they did, that they would not be able to obtain the appropriate medical care. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Again, the AAO notes the U.S. Department of State Travel Warning for Mexico, which was updated on November 20, 2012; however, the record does not document how the applicant's children in particular, would face hardship as a result of the safety concerns in Mexico. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case,

should the applicant's children relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's qualifying relatives' concerns over the applicant's immigration status are neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, 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(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, each 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 a qualifying relative as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility 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.