



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAY 10 2013**

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: [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) and 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, 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 and under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having attempted to gain admission to the United States using a U.S. citizen's birth certificate. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), and 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 and U.S. lawful permanent residence mother.

On March 15, 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 evidence 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 statement from the applicant's spouse, a statement from the applicant's mother, medical records for the applicant's spouse, limited tax records for the applicant's spouse; information pertaining to the applicant's spouse's employment, biographical information for the applicant's son, and documentation in connection with the applicant's criminal convictions 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.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(ii)(I) of the Act which provides, in pertinent part that,

(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.

(ii) Falsely claiming citizenship.--

(I) In general.--Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

...

In this case, the applicant made a false claim to U.S. citizenship when he presented the birth certificate of a U.S. citizen to immigration officials on July 28, 1994 in an attempt to procure admission to the United States. The record indicates that the applicant was found to be inadmissible

for having made a false claim to U.S. citizenship and was allowed to voluntarily return to Mexico. As the applicant's false claim to United States citizenship occurred prior to September 30, 1996, he is inadmissible under section 212(a)(6)(C)(i) of the Act in lieu of being inadmissible under section 212(a)(6)(C)(ii) of the Act.

The provisions of Section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship were added to the Act as part of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The Act currently allows no waiver for false claims to U.S. citizenship. However, if the false claim was made prior to the enactment of IIRIRA, September 30, 1996, it is treated as misrepresentation under section 212(a)(6)(C)(i) of the Act and the alien is eligible to apply for a waiver under section 212(i). *Memorandum by Lori Schialabba, Associate Director, RAIO, Donald Neufeld, Associate Director, Domestic Operations Directorate, Pearl Chang, Acting Chief, Policy and Strategy, dated March 3, 2009.*

The AAO notes that the applicant was 17 years old on July 28, 1994. Section 212(a)(6)(C)(i) of the Act, however, provides no exception for minors. The applicant personally presented the birth certificate of another individual in order to gain entry into the United States. The circumstances under which the applicant sought admission to the United States suggest that the applicant's use of that document was willful, and the record contains no evidence to suggest, to the contrary, that it was unintentional or involuntary. The AAO finds that the applicant's attempted procurement of admission to the United States through fraud or misrepresentation was willful and that no exception for minors exists under section 212(a)(6)(C)(i) of the Act. This ground of inadmissibility is permanent.

The applicant's inadmissibility may be waived under section 212(i) of the Act, which states:

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [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 Attorney General [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.

The AAO notes that the applicant unlawfully reentered the United States after he was offered voluntary return in 1994 and subsequently has been arrested and convicted of multiple criminal offenses during the period of time that he has resided here. The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of multiple crimes involving moral turpitude and does not dispute his inadmissibility on appeal.¹ Because the

¹ Additionally, The AAO notes that on March 4, 2003, the applicant was convicted in violation of California Penal Code section 148.9(A), False Identification to a Police Officer. He was sentenced to serve 4 days in jail and two years of probation. The applicant violated the terms of his probation and was later ordered to serve an additional seven days in jail. On August 6, 2004, the applicant was convicted in violation of California

applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), and as the AAO finds that the applicant has not demonstrated extreme hardship to a qualifying relative, we will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I). The AAO notes, however, that on June 20, 2002, the applicant pled guilty to violation of section 11377(A) of the California Penal Code, Possession of a Controlled Substance and section 11550(A) of the California Penal Code, Use/Under Influence of Controlled Substance, but the applicant has not submitted the full record of conviction, including any evidence of the conviction being vacated or expunged, which is necessary to determine inadmissibility of section 212(a)(2)(A)(i)(II) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. Hardship to the applicant or his children is not considered in 212(i) waiver proceedings unless it is shown to cause hardship to a qualifying relative, in this case the applicant's spouse or mother. 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-Moralez*, 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

Penal Code section 484(A), Petty Theft. He was sentenced to 12 days in prison and 36 months of summary probation. The applicant again violated the terms of his probation and was later ordered to serve an additional 12 days in jail.

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.

On appeal, counsel states that the Field Office Director failed to consider important hardship factors and assumed facts not in the evidence. The AAO will consider the hardships to each qualifying relative, in turn, both if they are separated from the applicant and if they were to relocate. The AAO recognizes the impact of separation on families and this matter arises within the jurisdiction of the Ninth Circuit Court of Appeals, which has said that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The first qualifying relative is the applicant's U.S. citizen spouse. Counsel states that the applicant's spouse suffered depression after her divorce from her first husband and that the applicant's "constant love and support has been crucial to her recovering from the depression and betrayal of her first marriage." The only documentation submitted in support of this statement is the applicant's spouse's own statements dated May 19, 2011 and May 8, 2012. 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 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). Moreover, the AAO notes that the applicant's spouse indicates in her second letter dated May 8, 2012 that she is currently suffering from depression, anxiety, and dizziness. She states that the applicant assists her emotionally and physically, as well as takes care of anything that needs to be done around the house. As a result, she states that life would be "unbearable" without her husband. In regards to the applicant's physical and mental health, the record contains a printout from [REDACTED] dated March 19, 2010 indicating that the applicant's spouse complained of feeling dizzy, "derm issues," and "mental problems." The AAO notes that significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. In this case, however, the evidence on the record is insufficient to establish that the applicant's spouse suffers from any specific condition and does not support counsel's assertion that the applicant's spouse "is unable to care for her child" as a result of her illnesses. There is also no documentation in the record to support counsel's assertion that the applicant's spouse's illnesses "could easily affect her ability to function as a teacher." Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO notes that the document submitted from [REDACTED] laid out a plan for the applicant to obtain additional assessments; however, the results of those assessments were not included in the record.

The applicant's spouse also states that she would suffer financial hardship if she were to be separated from the applicant. In particular, she states that she bought a home that requires "constant work and maintenance." She states that if the applicant were no longer present, she would have to get rid of the home. The record indicates that the applicant's spouse purchased a home on January 5, 2009. There is no documentation in the record, however, to support the applicant's spouse's statement that she would have to get rid of the home if the applicant were no longer present. 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. The AAO notes that the applicant's spouse is the primary breadwinner for the family. Her reported earnings in 2010 were

\$73,059.87. Although the applicant reported earnings of \$37,261.25 in 2010 it is not possible from the record to determine the degree of financial hardship, if any, that his spouse would suffer in his absence. There is no documentation in the record of the couple's expenses. The applicant's spouse states that the applicant cares for the couple's young son; however, there is no documentation in the record to support that assertion or to indicate what the applicant's spouse's child care expenses would be in the applicant's absence. This documentation on record does not provide a clear picture of any financial hardship that the applicant's spouse may experience. The evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's separation from the applicant is extreme. *Matter of O-J-O*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's lawful permanent resident mother would suffer if she were to be separated from the applicant, counsel states that she is an "elderly widow" who relies on the applicant and his family for emotional support. In particular, counsel states that the applicant's mother is recovering alcoholic and that the applicant was instrumental in helping her overcome her drinking problem. In support of these assertions, the record contains a letter from the applicant's mother but no additional independent evidence to document her residence, conditions of health, or reliance on the applicant for her emotional or physical health. Again, 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. The AAO notes that the applicant's mother is 57-years-old, an age that is not normally considered elderly. Moreover, in the applicant's mother's own statement she recounts that she is grateful for her good health. Although the applicant's mother states that she has some aches and pains and counts on the applicant and his spouse as "a source of company, comfort and love," there is no documentation in the record to indicate that the hardship that she would suffer in the applicant's absence would be extreme. Although the AAO notes that the applicant's spouse would likely endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships she 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 the United States and does not appear to have any ties to Mexico. The AAO also notes that the applicant's spouse is the primary breadwinner for her family and has an established career as an educator. She also cites her close relationship to her parents and her mother-in-law as basis for hardship upon relocation. The AAO notes that there is no documentation in the record establishing the applicant's spouse's relationship to her parents, their residence, and the extent of her interaction with them. The applicant's spouse also expressed fear of the violence and economic situation that she believes her family would face in Mexico. Counsel states that moving to Mexico would be "financial ruin" for the applicant's spouse. He also states that the applicant's spouse would suffer if she could not provide her son with a "nice home, quality education, and safety." Counsel provided no documentation in support of those statements and 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. The AAO takes administrative note of the Travel Warning in regards to Mexico issued by the U.S. Department of State on November 20, 2012. The AAO also notes, however, that not all areas of Mexico are considered unsafe. The record only indicates generalized worries felt by the

applicant's spouse in regards to relocation, but no concrete information was provided regarding why the applicant's spouse feels that her family would face financial and physical difficulties in Mexico. 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.

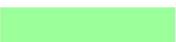
Counsel also states that the applicant's U.S. lawful permanent resident mother would face extreme hardship if she were to relocate to her native Mexico as a result of the conditions in that country. Again, no documentation was provided to support that assertion. The applicant's mother in her letter indicates that she has a son who resides in Mexico, but no mention is made by counsel of his circumstances in Mexico or whether he is able to assist his mother much in the way it is stated that the applicant does so presently. 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 spouse, 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 mother 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(i) 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(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 he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(i) 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.

(b)(6)



Page 9

ORDER: The appeal is dismissed.