



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 19 2013** OFFICE: NEWARK, NJ

FILE: [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:

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 waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jamaica 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 committed violations related to a controlled substance. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility under section 212(h), 8 U.S.C. § 1182(h), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish extreme hardship to her qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 9, 2013.

On appeal, counsel submits a brief in support, a psychological evaluation, and copies of previously submitted statements from the applicant and her spouse. In the brief, counsel contends the spouse will suffer hardship upon separation because he will not have enough assistance and emotional support to take care of his diabetic mother. Counsel moreover asserts the spouse will be unable to relocate to Jamaica because he cannot take care of and financially support his mother from that country.

The record includes, but is not limited to, the documents listed above, other applications and petitions, medical records, documentation of criminal proceedings, a photograph, and evidence of birth, marriage, and citizenship. The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel also submits copies of other AAO decisions. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions submitted by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

We will first address the applicant's admissibility and eligibility for a waiver. The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance.

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

(A) Conviction of certain crimes. –

- (i) In general. - Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

...

(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.

Section 101(a)(48) of the Act provides:

- (A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
 - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

On February 24, 2010 the applicant was arrested in Medford, New Jersey, and the next day she was charged with possession of under 50 grams of marijuana pursuant to New Jersey Statute §2C:35-10A(4). On March 3, 2010 the applicant entered a plea of guilty to that charge, and the Medford Township Municipal Court ordered her to complete a conditional discharge program. On September 7, 2010, the applicant was found to have complied with the terms of the conditional discharge program, which included reporting to probation, submitting negative drug screens, paying a fine, and attending a class on drug abuse. The AAO therefore finds, based on the present record, that the applicant was convicted of one offense involving the possession of marijuana.

As result of the applicant’s conviction for possession of marijuana, she is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of an offense involving possession of a controlled substance.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 if -

- (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.

In order to be eligible for consideration for a waiver under section 212(h) of the Act, the applicant must establish that his conviction relates to simple possession of 30 grams or less of marijuana. In this case, a forensic lab report indicates the applicant had 0.04 grams of marijuana in her possession. As the applicant's conviction was for simple possession 30 grams or less of marijuana, the AAO finds the applicant is eligible for a waiver under section 212(h) of the Act. The applicant's qualifying relative for a waiver of inadmissibility in this case is her U.S. citizen spouse.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Under section 212(h), qualifying relatives include U.S. citizen or lawful permanent resident spouses, parents, sons and daughters. Hardship to the applicant is considered only to the extent it results in hardship to the qualifying relative. 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).

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 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 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 v. I.N.S.*, 138 F.3d 1292 (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 applicant's spouse contends he will experience financial, psychological, and family-related difficulties without the applicant present. He explains that he and his sister are responsible for taking care of their mother, who has diabetes, is blind, goes to dialysis three times a week, and

requires assistance with taking medication and daily tasks. Medical records from 2010 to 2011 are submitted in support. The spouse states that his mother only allows him and his sister to take care of her, but that both of them are unable to devote their full-time attention to their mother because the spouse has two jobs and the sister has additional responsibilities due to her two children, ages two and six. He indicates that the applicant provides support to both him and his sister so they in turn can have more time to devote to their mother. The spouse claims that without the applicant's assistance, they would have great difficulty meeting their obligations towards their mother. The spouse adds that he also relies on the applicant for emotional support. A psychological evaluation is submitted on appeal. Therein, a psychologist indicates the spouse's childhood with his mother left emotional and physical scars. The psychologist explains that the mother used corporeal punishment as an essential childrearing technique, blamed the spouse for her gestational diabetes but refused to follow any recommended dietary restrictions, and was generally a rigid, unforgiving parent. The psychologist further reports that the spouse only met his father three or four times, and that he does not have a relationship with him. In the evaluation, the psychologist opines that the spouse consequently has problems with trust, has difficulty being open with others, and with communicating. The psychologist states that this changed during the spouse's relationship with the applicant, and that the applicant has helped him deal with the complex emotional situation caused by the spouse's responsibilities towards his hostile mother. The spouse reports that the mother is so difficult that she has chased out physicians, home health aides, and others who came to assist her, and that she is irascible, rejecting, and disparaging of the spouse. The psychologist concludes that the spouse suffers from significant emotional distress and demoralization, and that he is moderately depressed. Counsel concludes that the applicant's assistance is valuable and necessary to the spouse because it helps him to be able to function on a daily basis while carrying on his demanding responsibilities.

The spouse claims he will experience financial and family-related difficulties upon relocation to Jamaica. Counsel explains the spouse's only means of providing care for his mother and paying for her medical bills is the income derived from his two jobs. Counsel contends the spouse will be unable to maintain his employment if he relocates to Jamaica, and that relocation would deprive the spouse's mother of her main caregiver. Counsel moreover asserts that moving the spouse's mother to Jamaica would be impossible because her medical services providers are here, and that the United States has better, more appropriate health care facilities for her condition.

The applicant's spouse claims on appeal that his mother has diabetes, has lost her vision in both eyes, undergoes dialysis three times a week, and needs assistance with daily tasks and her medications. In support of these assertions counsel submitted copies of medical records for the spouse's mother. The records consist of laboratory results and physician's "progress notes" for medical care from 2010 to 2011. This evidence, however, is insufficient to establish that the mother has diabetes, the extent to which the condition has progressed, the treatment she is undergoing, or whether any family assistance is needed. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical

condition of the spouse's mother.¹ 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. Consequently, the AAO cannot determine what difficulties will be experienced by the spouse without the applicant's assistance related to his mother's medical condition.

The record reflects that the applicant's spouse has suffered some emotional difficulties as a result of his childhood, and that a relationship with the applicant has alleviated those hardships. The applicant has additionally shown that the spouse continues to experience some psychological hardship. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Jamaica without her spouse.

The applicant has also failed to establish that her spouse would experience extreme hardship upon relocation to Jamaica. The record contains no evidence to support assertions that the spouse would be unable to find adequate employment in Jamaica to meet his financial obligations. Although the applicant'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). Furthermore, without sufficient evidence on the spouse's mother's medical condition, as described above, the AAO is not in the position to evaluate any hardship the spouse will experience upon separation from his mother.

The AAO acknowledges that relocation to Jamaica will entail separation from family members in the United States, as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, or other impacts of relocation on the applicant's spouse are in

¹ The AAO notes that although the psychologist describes the mother's medical condition, there is no indication of record that the psychologist has treated the mother, or is qualified to make conclusions on the mother's diabetes.

the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Jamaica.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her U.S. Citizen spouse 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 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 appeal is dismissed.