U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 18 2014 Office: RENO 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 (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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Reno, Nevada, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who was admitted in 1992 under the Visa Waiver Program[1] as a five-year-old accompanying his grandmother (and adoptive parent), sister, and their stepfather. He was found to be inadmissible to the United States under 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 crimes relating to a controlled substance. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded that, although the applicant's inadmissibility stemming from related controlled substance violations qualified for possible waiver, the applicant failed to establish the requisite hardship to a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* October 16, 2013.

On appeal, counsel for the applicant asserts that USCIS erred by failing to properly apply the extreme hardship standard. In support of the appeal, the applicant submits a psychological evaluation and updated statements of his wife and her parents. The record also contains documentation submitted in support of the original waiver and adjustment of status applications, including: copies of birth certificates and passport pages, tax returns, medical records, a lease agreement, and photographs. The entire record was reviewed and considered in rendering this decision.

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

> (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 … 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)),
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> > is inadmissible.

The record establishes that the applicant pled guilty on April 11, 2006 to possession of one ounce or less of marijuana, as well as to possession of drug paraphernalia. He does not dispute that he is

[1] Although the applicant claims on his I-485 to have entered in 1990, immigration records indicate his last arrival to have been May 26, 1992.

inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act. The only waiver available for this ground of inadmissibility is outlined in section 212(h) of the Act.

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

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 -
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> > (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 . . . .

A waiver is not available for inadmissibility under section 212(a)(2)(A)(i)(II) of the Act, except for a single offense of simple possession of 30 grams or less[2] of marijuana. Although the applicant was convicted of both possession of marijuana and possession or use of paraphernalia – it is well-established that these convictions relate to the same criminal conduct for waiver purposes. *Matter of Martinez Espinoza*, 25 I&N Dec. 118, 124-25 (BIA 2009)("criminal conduct bore such a close relationship to the simple possession of a minimal quantity of marijuana that it should be treated with the same degree of forbearance under the immigration laws as the simple possession offense itself."). He is thus eligible to seek a waiver under section 212(h)(1)(B) of the Act.

A waiver of inadmissibility 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 or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable

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[2] As one ounce = 28.3495231 grams, possession of less than one ounce meets the standard required for a possible waiver under the Act.

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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir.

1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the evidence on record does not establish that the cumulative effect of problems impacting his wife represents hardship that rises to the level of "extreme." The record shows that his 28-year-old wife was born here, has lived in the United States her entire life, has an employment history consisting of several jobs for less than three months each, and takes three prescription medicines daily. Counsel asserts that the qualifying relative's medical problems may go untreated in the United Kingdom (U.K.), while lack of skills and inability to readily understand or be understood in the English spoken in Scotland may make her unlikely to find employment.

The record evidence reflects that, as a result of childhood surgery for a pituitary tumor, the applicant's wife suffers from pituitary disorders and receives replacement therapy for hormone deficiency. She is blind in her right eye and takes medication for diabetes insipidus, a kidney disorder causing excessive thirst. However, the evidence does not support the claimed inability to work[3] or show that her medical conditions are disabling. There no indication she would have problems accessing medical care in the United Kingdom or be unable to obtain necessary medication overseas. The applicant provides no documentation regarding the participation of a U.K. citizen or his alien spouse in the U.K. National Health Service, or of the procedure for doing so. While we recognize that relocating would create some hardship, without documentary evidence to support the claimed lack of access to healthcare,[4] counsel's statements do not satisfy the applicant's evidentiary burden. Although immigration records establish that the applicant entered the country as a child, he provides no evidence regarding claims to having been adopted by his grandmother or that he lacks contacts in the United Kingdom. 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). 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)).

Regarding the claim of hardship due to separation, there is evidence the applicant's departure will cause a qualifying relative emotional hardship. Supporting the applicant's wife's emotional hardship claim are her own statements and her parents' statements about the bond between the applicant and his wife. A social worker confirms that the applicant is his wife's primary support system and diagnoses her with adjustment disorder and a slight level of depression and anxiety due to concerns

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[3] A social worker notes that she is a high school graduate and the record shows she has a work history.

[4] Counsel acknowledges that comparable care exists in the United Kingdom, but asserts that care will be unavailable to the applicant's wife due to lack of resources and lack of eligibility for public health benefits under the U.K. health system.

about her husband's immigration status. *See Family Mental Health Assessment,* November 4, 2013. The social worker notes the qualifying relative's reports of insomnia and weight fluctuations, but there is no indication on record of treatment for psychological issues. Although documentation shows the applicant's wife is being treated with prescription medications, there is no evidence the applicant has any role in treatment or of the severity of his wife's conditions. We note that, prior to moving in with the applicant, the qualifying relative lived with her parents. Then, after the death of the applicant's grandmother with whom the applicant and his wife resided, the qualifying relative moved back in with her parents (accompanied by the applicant). While sensitive that separation from the applicant will result in some hardship to his wife, we note that documentation on record does not establish that the applicant's wife will suffer hardship beyond the common or usual result of separation from a spouse.

Regarding financial hardship, the record evidence does not establish that the applicant's departure will cause a qualifying relative problems. As the applicant does not currently work, claims never to have been employed, and lives with his wife and her parents, the evidence indicates that he contributes no income support. Documentation shows his wife is being treated with several prescription medications, but fails to establish their cost, how she is paying for them, or that the applicant has any role in this treatment. While we note a month-to-month lease stating rent due from the couple to the qualifying relative's father, the document states that this rent shall be paid in the future when they are able to afford it. There is no indication that the applicant's wife has any other expenses or that her husband's absence will cause her economic situation to worsen. Statements indicate that, although not currently employed, the applicant's wife is the only one of the two ever to have been gainfully employed.

For all these reasons, the cumulative effect of the emotional and financial hardships a qualifying relative will experience due to the applicant's inadmissibility does not rise to the level of extreme. We conclude based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has not established that a qualifying relative will suffer extreme hardship if he is unable to live in the United States. We recognize that the applicant's wife will endure hardship as a result of the applicant's inadmissibility. However, her situation is typical of individuals affected by removal or inadmissibility, and we thus find that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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.