



U.S. Citizenship
and Immigration
Services

115

DATE: DEC 20 2012 OFFICE: PANAMA CITY FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v) and Section 212(i) of the Act, 8 U.S.C. § 1182(i)

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, Panama City, Panama. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. She was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse.

In a decision dated February 23, 2012, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant's spouse will in fact suffer from extreme hardship as a result of the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to a brief from counsel, a letter from the applicant's spouse, biographical information for the applicant and her spouse, limited financial records for the applicant's spouse, documentation of the applicant's spouse's real estate license and other employment, a psychological assessment of the applicant's spouse, documentation of the applicant's spouse's travel to Ecuador, country conditions information concerning Ecuador, and documentation of the applicant's 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 applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant is also inadmissible under section 212(a)(6)(C) 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.

Section 212(i) of the Act provides a waiver for section 212(a)(6)(C). That section states that:

(1) 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 applicant, a native and citizen of Ecuador, states that she was admitted to the United States in April 2000 using a Spanish passport belonging to another individual. The applicant remained in the United States unlawfully through her departure in November 2007. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation of a material fact. Additionally, the applicant accrued one year or more of unlawful presence in the United States. The applicant is, therefore, also inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The unlawful presence ground of inadmissibility applies to the applicant for a period of ten years from her departure in November 2007. The applicant's inadmissibility under section 212(a)(6)(C) of the Act, however, is a permanent grounds of inadmissibility. The applicant does not contest her inadmissibility on appeal.

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, the same standard as required under section 212(a)(9)(B)(v) of the Act. In this case, the applicant's qualifying relative is her U.S. citizen spouse. Hardship to the applicant or the applicant's children is only relevant under sections 212(a)(9)(B)(v) and 212(i) of the Act to the extent that the hardship is shown to cause hardship to the qualifying relative. If extreme hardship to the applicant's 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-I-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 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 for the applicant states that adequate weight was not given to the psychological and economic hardship to the applicant's U.S. citizen husband, as well as to his ties to the United States or the country conditions in Ecuador. In regards to the hardship that the applicant's U.S. citizen spouse would suffer if he were to remain separated from the applicant as a result of her inadmissibility, counsel states that "marital separation caused [the applicant's] husband stress and the increased [sic] likelihood of mental health issues." He also states that the applicant's spouse is suffering from economic hardship as a result of the separation. In regards to the psychological hardship, counsel states that after learning that the applicant would not be admitted to the United States, the applicant's spouse "was forced to consult with clinical psychologist, [REDACTED] [REDACTED] who diagnosed the applicant's spouse with Major Depressive Disorder and Anxiety Disorder. Counsel states that the applicant's spouse's mental health issues rise to the level of extreme hardship. In his brief counsel quotes [REDACTED] assessment. He states that [REDACTED] reported that:

In view of the above clinical data and information provided by [the applicant's spouse], it is fair to conclude that the separation from his wife is a direct consequence of his psychological symptoms (i.e. Depression and anxiety). It is my professional opinion that if [the applicant] is not permitted to enter the U.S. legally or granted lawful permanent residence, this family's psychological health will exacerbate putting them at risk of developing even more severe psychological and health problems.

The AAO notes that [REDACTED] makes clear that the applicant's spouse sought his assistance in preparing an assessment for the purposes of the waiver application, not for the purposes of treating a psychological issue, which calls into question counsel's statement that the applicant's spouse was "forced" to consult with a clinical psychologist as a result of his symptoms. Secondly, it is

not clear what [REDACTED] means to say in the first quoted sentence, however, if it was meant to be said that the psychological symptoms are a result of separation from the applicant, not that the separation is a result of the symptoms, the AAO notes that the psychological symptoms reported by the applicant appear to be those normally experienced by individuals separated as a result of immigration inadmissibility. In the applicant's spouse's statement on appeal, he states that he became "very distraught and anxious" when he found out the applicant would not receive a visa. [REDACTED] reports that the applicant's spouse's symptoms are debilitating, although no supporting evidence indicates that the applicant's spouse is not able to carry out his everyday functions. Additionally, the AAO notes the second sentence of [REDACTED] quote refers to the family as a whole and not to the qualifying relative. As stated above, Congress did not include the applicant's children as qualifying relatives under sections 212(a)(9)(B)(v) or 212(i) of the Act. There is no information to suggest that the applicant's spouse's symptoms are extreme in nature. The symptoms in [REDACTED] report, however, will be taken into account cumulatively with the other evidence of hardship presented.

In regards to economic hardship, counsel states that the applicant's spouse's income decreased from 2008 to 2010 and he was forced to take a temporary job. Counsel states that as a result of the applicant's spouse's financial problems, he is no longer able to afford trips to Ecuador and has "very little" money to support the applicant and his children. There is no evidence in the record of the applicant's spouse's financial hardship. Although his tax returns indicate a lower reported income for 2010, no documentation was submitted to show the applicant's spouse's financial situation in 2011. There is also no documentation to indicate the applicant's spouse's expenses and his inability to meet those expenses nor is there documentation to illustrate the applicant's spouse's stated support of his children. 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). The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel states that the hardship that would fall on the applicant's spouse if he were to relocate to Ecuador would be even worse than the hardship that he suffers being separated from the applicant. In particular, counsel states that the applicant's spouse would not be able to find employment as a real estate salesman in rural Ecuador, and that he does not have "skills or connection to find a job in another field." The applicant's spouse does not state that he has tried to find employment in Ecuador, but rather states that he "does not believe [he] could find employment" there. Moreover,

the AAO notes that the applicant's spouse may not be able to work in real estate in rural Ecuador, but he has not illustrated that he is unable to obtain other types of employment or relocate to a larger city Ecuador. The AAO recognizes the applicant's spouse's difficult position, however, as stated above the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. at 885; *Matter of Ngai*, 19 I&N Dec. at 246-47; *Matter of Kim*, 15 I&N Dec. at 89-90; *Matter of Shaughnessy*, 12 I&N Dec. at 813. Counsel also states that the applicant fears for his "health, safety, and security if he returns to Ecuador." The AAO notes the country conditions evidence in the record, the applicant, however, has resided in Ecuador since November 2007 and the applicant's spouse has visited Ecuador on numerous occasions, and no incidences affecting their health, safety, and security in that country have been documented. Counsel also notes the applicant's spouse's family ties in the United States, although the record contains no evidence of those ties and the significance that separation from those ties would have on the applicant. 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. 158 at 165. The applicant's spouse is a native of Ecuador, speaks Spanish, and there is no documentation to illustrate that the hardship that he would suffer if he were to relocate there would be extreme in nature. 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 Ecuador, 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 spouse's concern over the applicant's immigration status is 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 sections 212(i) and 212(a)(9)(B)(v) 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 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 qualifying relative as required under sections 212(i) and 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.