



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: APR 25 2013

Office: HIALEAH

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)

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, Hialeah, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Nicaragua, was found inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen spouse.

In a decision dated June 18, 2012, the Field Office Director concluded that the applicant did not demonstrate that his U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel states that the applicant should not be inadmissible under section 212(a)(6)(C)(i), or in the alternative, that the applicant has demonstrated that his spouse would suffer from extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to letters from counsel, letters from the applicant, letters from the applicant's spouse, documentation regarding the applicant's spouse's emotional health, biographical information for the applicant and her spouse and their children, financial records for the applicant and her spouse, letters from family members of the applicant and his spouse, employment documentation for the applicant and his spouse, and documentation of the applicant's immigration and criminal 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 AAO notes that we have previously dismissed two appeals by the applicant in regards to his multiple applications for a waiver of inadmissibility.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which provides, in pertinent part:

- (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.

The record reflects that the applicant is inadmissible under section 212(a)(6)(C) of the Act as a result of his failure to disclose his prior immigration and criminal history on his nonimmigrant visa application in 1997 and at the time of his admissions in nonimmigrant status from 1997-1999. The applicant has an extensive immigration history, but the relevant facts include that he was granted voluntary departure from the United States on December 1, 1986 and failed to timely

depart the United States before July 6, 1987. Additionally, it is relevant that the applicant was convicted of possession of cocaine on January 21, 1986. The applicant failed to disclose both his deportation order and his criminal conviction at the time of his visa application and when he was admitted on his nonimmigrant visa. As a result, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The applicant now states that he timely departed the United States before July 6, 1987, but he has not provided any documentation in support of that statement. It is the applicant's burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. As the record indicates that the applicant did not timely depart the United States, his grant of voluntary departure became an order of deportation.<sup>1</sup>

Counsel for the applicant states that the applicant's conviction was vacated for constitutional reasons and thus he "is not required to submit a waiver of inadmissibility for fraud because he did not make a material misrepresentation on his visa application in 1997." The record establishes, however, that the applicant's conviction was not vacated until March 3, 2000. The AAO also notes that although counsel states that the applicant's criminal conviction was vacated on constitutional grounds, and an attorney affidavit is provided stating as such, the court records submitted do not make clear the reasons the applicant's conviction was vacated. The conviction is not eliminated for immigration purposes, if it was vacated for reasons "solely related to rehabilitation or immigration hardships, rather than on the basis of a procedural or substantive defect in the underlying criminal proceedings." *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003). Additionally, the AAO notes that the record indicates that criminal charges were brought against the applicant in Nicaragua in 2002; however, the record does not contain a final disposition for those charges. As a result, the record is unresolved as to potential inadmissibility under section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2). This matter does not need to be decided at this time as the applicant is separately inadmissible under section 212(a)(6)(C) and has not demonstrated extreme hardship to a qualifying relative.

Section 212(i) of the Act provides 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

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<sup>1</sup> The record does not contain an Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) in connection with the applicant's 1987 deportation order and resulting inadmissibility under section 212(a)(9)(A)(ii)(II). Additionally, the applicant was placed into removal proceedings in 1999 and again granted voluntary departure by the Immigration Judge on March 30, 2000. The applicant, however, has remained present in the United States aside from his departures and paroles pursuant to section 212(d)(3) of the Act.

extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 and 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-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.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse would experience financial and emotional hardship that rises to the level of extreme. In particular, counsel states that due to the nature of the applicant's long residence in the United States and his family and employment ties here, his spouse would suffer extreme hardship if he were no longer here to contribute to the family. The record establishes that the applicant and his spouse have been married since May 2, 1987 and together have one child who is now an adult. Additionally, both the applicant and his spouse have adult sons from previous relationships. Counsel states that without the applicant present, the applicant's spouse "would lose the life she has built with her husband in this country for over twenty-five years." Counsel, however, does not provide any more details beyond this general statement. The record contains a report from a psychological consultation dated May 25, 2009 prepared by Dr. [REDACTED] PsyD, Clinical Psychologist. The record contains a second psychological evaluation based on testing performed in 2006. These reports were submitted with the applicant's prior waiver applications and appeals and no new information regarding the applicant's spouse's emotional health has been submitted on appeal. The older evaluation stated that the applicant's spouse met the criteria for "depressive disorder," but also stated that testing indicated that the applicant's spouse's validity scores on the MMPI-2 were highly elevated which may be indicative of an individual who may be amplifying problems as a plea for help. The report from 2009 describes a close family relationship between the applicant, his spouse, and the couple's children. In regards, the qualifying relative, the applicant's spouse, the report states that the applicant's spouse depends on the applicant "for everything" and that separation from the applicant would cause her extreme hardship.

The applicant's spouse states that her employment is reliant on the applicant's employment and that she would no longer have a job if her husband did not reside in the United States. The applicant's spouse also states that she would lose her home if she could no longer rely on the applicant's income. Although the record contains federal income tax returns for the couple through 2010, an assortment of bills for medical and home maintenance, credit card statements, and pay stubs for the applicant's spouse, those documents do not illustrate the degree of financial

hardship that the applicant's spouse would suffer in the applicant's absence. Counsel states that the applicant's spouse would be left without the applicant's financial support if he were to no longer reside in the United States, however, the record does not illustrate that the applicant would be unable to support his spouse financially from abroad. In fact, the record demonstrates that the applicant previously ran a company that was based in Nicaragua. 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). Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, particularly as result of their long-term marriage, 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 Nicaragua to reside with the applicant, counsel states that the applicant's spouse cannot return to Nicaragua as the result of her fear of persecution in that country. In support of that statement, the 2009 psychological report from Dr. [REDACTED] states that the applicant's spouse is afraid to return to Nicaragua and that living there is not an option. The applicant's spouse is a native of Nicaragua and became a naturalized U.S. citizen on May 13, 1996. The record does not contain evidence to document that the applicant's spouse presently would face danger if she were to return to Nicaragua. Moreover, the most recent psychological assessment in the record which dates back to 2009 does not establish the basis for the applicant's spouse's fear of returning to or residing in Nicaragua. The record does establish that the applicant's spouse has family ties in the United States, including her children, stepchild, and siblings; however, the record does not establish that her separation from those individuals would cause her hardship that amounts to extreme. As stated above, 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 evidence, when considered in the aggregate, does not establish that the applicant's spouse would suffer extreme hardship were she to relocate to Nicaragua to reside with the applicant.

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 section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631.

Considered in the aggregate, the hardship to the applicant’s spouse does not rise to the level of extreme beyond the common results of removal. 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) 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.