

(b)(6)

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



U.S. Citizenship
and Immigration
Services

Date: **JAN 14 2019** Office: FRANKFURT, GERMANY

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

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 in accordance with the instructions on 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 "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born of Eritrean parents in Ethiopia and she is a citizen of the Netherlands who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a U.S. immigration benefit through fraud or the willful misrepresentation of a material fact; and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(9)(B)(v), in order to reside in the United States with her spouse.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 6, 2011.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in failing to consider the evidence in the aggregate and in refusing to give proper weight to the evidence presented. *Form I-290B, Notice of Appeal or Motion*, filed May 2, 2011. Counsel submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, letters of support, medical and psychological documents for the applicant and her husband, financial documents, household and utility bills, phone records, photographs, country-conditions documents on Ethiopia, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act 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.

.....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

(b)(6)

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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.

Section 212(a)(9) of the Act provides, in pertinent part:

(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.

....

- (iii) Exceptions.-

....

- (II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

....

- (v) Waiver.-The [Secretary] 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 [Secretary] 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.

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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*, 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.

In the present case, the record indicates that on November 14, 2000, the applicant entered the United States under the Visa Waiver Program (VWP). On February 18, 2001, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589), which an immigration judge denied on July 26, 2002. The record establishes that the applicant initially claimed to have used a fraudulent Dutch passport to enter the United States and that she was an Ethiopian citizen; however, the applicant under oath in August 2006 testified that she used her own valid Dutch passport to enter the United States and that she is a Dutch citizen. The applicant filed an appeal of the immigration judge's decision to the Board, which the Board dismissed on March 9, 2004. On February 26, 2005, the applicant departed the United States. On May 31, 2005, the applicant lawfully reentered the United States, with authorization to remain until August 29, 2005. She was removed from the United States on September 1, 2006.

Based on the applicant's misrepresentation regarding her citizenship in her asylum-only proceedings, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Additionally, since the applicant accrued over one year of unlawful presence between August 30, 2005, and September 1, 2006, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of her departure from the United States.¹ The applicant does not dispute these findings.

In a statement dated April 26, 2010, the applicant's husband states that if he joined the applicant in the Netherlands, he would have no employment opportunities and people would assume that he has to rely on social services. The applicant's husband also states he has resided in the United States since 1997 and works as a taxicab driver. In her appeal brief dated June 26, 2012, counsel claims that the applicant's husband knows nothing about the Netherlands, and he has "no work-life experience" in the Netherlands. She states that without employment, they would be unable to secure a home. Additionally, the applicant's husband does not speak Dutch.

Medical documentation in the record establishes that the applicant's husband has AIDS. Counsel claims that the applicant's husband cannot join the applicant in the Netherlands, because he has established a relationship with his doctor in the United States.

¹ Under section 212(a)(9)(B)(iii)(II) of the Act, no period of time in which the applicant has a bona fide asylum application pending shall be taken into account in determining the period of unlawful presence in the United States, unless the applicant was employed without authorization.

(b)(6)

The AAO acknowledges that the applicant's husband is a U.S. citizen, and that relocation abroad would involve some hardship. However, no documentary evidence has been provided establishing that he would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 medical hardship to the applicant's spouse, no documentary evidence was submitted establishing that he cannot receive medical treatment for his medical condition in the Netherlands or that he has to remain in the United States to receive treatment. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to the Netherlands.

In addition, the record fails to establish extreme hardship to the applicant's husband if he remains in the United States. In her letter dated August 3, 2010, counsel states the applicant and her husband are a close and loving couple. In a statement dated May 17, 2010, the applicant states she and her husband have much in common and make a "great team." Counsel claims that the applicant's husband has suffered emotionally, psychologically, and socially since he has been separated from the applicant. The applicant's husband states everything is different without the applicant, and he is "alone and empty." In a statement dated June 25, 2010, counselor [REDACTED] reports that the applicant's husband is often tired, which in part is attributable to his being depressed without the applicant. Additionally, counsel states the applicant's husband is having difficulty concentrating.

The applicant states that during her pregnancy, she discovered she was HIV positive. Unfortunately, she lost the baby, and it has been difficult to be separated from her husband during this time. Medical documentation in the record establishes that the applicant is HIV positive. Additionally, as noted above, the applicant's husband has AIDS. The applicant's husband states that when he was first diagnosed with HIV, he thought his life was over, but his health provider has given him hope. In a statement dated April 10, 2010, physician assistant [REDACTED] states the applicant's husband's "prognosis is very good," and he "has excellent adherence to his medications." Counselor [REDACTED] claims that she fears that the applicant's husband will discontinue his medication if the applicant cannot join him in the United States. Additionally, counselor [REDACTED] states that the applicant's husband needs emotional support while dealing with his disease. Counsel claims that further separation "increases the likelihood of complications of [HIV]."

The applicant's husband states the applicant did everything for him when she was in the United States, but now with the loss of her support and income, his life has become difficult. Counsel states the applicant's husband is having financial difficulties. Additionally, she claims that he is unable to maintain the upkeep of the home.

The AAO acknowledges that the applicant's husband is suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover,

though counsel refers to financial difficulties, the record does not contain sufficient evidence corroborating her statement that the applicant's husband is unable to support himself in the United States. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 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). Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain any documentary evidence establishing that the applicant would be unable to obtain employment in the Netherlands and, thereby, financially assist her husband from outside the United States. With respect to the applicant's spouse's medical hardship, although the record establishes that he suffers from medical issues, the medical documentation in the record does not establish that separation from the applicant elevated his symptoms or that he requires the applicant's assistance because of his medical conditions. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 sections 212(i) and 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for 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. *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.

ORDER: The appeal is dismissed.