



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 01 2013** OFFICE: SANTO DOMINGO FILE: [REDACTED]

IN RE: [REDACTED]

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

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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO), as was a subsequent motion. The matter is now before the AAO again on motion. The motion is granted and the prior AAO decision is affirmed.

The applicant is a native and citizen of the Dominican Republic 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), due to her procurement of admission to the United States using a passport and visa issued in the name of another individual. The applicant was also found to be inadmissible to the United States pursuant to section 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse.

In a decision dated September 1, 2010, the Field Office Director concluded that the applicant did not meet her burden of proof to illustrate that her U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. On August 1, 2012 the AAO dismissed the applicant's appeal of that decision. The applicant, through counsel, filed a motion to reopen and motion to reconsider that decision and on March 12, 2013, the AAO affirmed the prior decision dismissing the applicant's appeal. The applicant, through counsel, has filed a second motion to reopen and reconsider

On motion, counsel states that evidence inadvertently omitted from the previous motion establishes that the qualifying relative will suffer from extreme hardship as a result of the applicant's inadmissibility.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the applicant has submitted new documentary evidence to support a motion to reopen, but has not stated that the prior decision was based on incorrect application of law or policy. We will consider the new evidence as part of a motion to reopen.

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 and under section 212(a)(6)(C) of the Act for having procured admission to the United States through fraud or material misrepresentation.¹

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. Hardship to the applicant or her children is not considered in section 212(a)(9)(B)(v) or 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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).

On motion, counsel for the applicant states that affidavits, financial, and medical records not previously submitted illustrate that the applicant's spouse is experiencing extreme hardship as a result of separation from the applicant. In regards to financial hardship, the record contains a new affidavit from the applicant's spouse where he details his income and expenses. The record also contains new documentary evidence which indicates that the applicant's spouse had a reported adjusted gross income of \$25,907 on his 2012 federal income tax return, in addition to evidence establishing the applicant's spouse's expenses from maintaining his household in Boston for him and his sons and a house in the Dominican Republic for the applicant and the couple's daughter.² The applicant's spouse's income is above the poverty guidelines for a family of three, which is \$19,530 for 2013. The evidence, however, indicates that the applicant's spouse does not earn enough to cover his monthly expenses, which includes approximately \$400 sent monthly to the Dominican Republic, and therefore he has borrowed approximately \$1,000 per month from his father. As a result, the applicant's spouse's father, in his affidavit, states that the applicant's spouse owes him \$64,000 and that the debt continues to rise. The applicant's spouse's father also states that his "resources are dwindling very low, and he will no longer be able to continue lending more money" to his son. He states that he expects his son to begin paying him back in January 2014 at the rate of \$500.00 per month. The record still fails to establish the contributions that the applicant made to the household prior to her departure or how her presence in the United States would impact the her spouse's financial situation, apart from the reduction in the amount of support that he would need to send to the applicant abroad.

¹ The record also indicates that on August 17, 2009, the applicant was arrested for Larceny over \$250, in violation of Massachusetts General Laws, Chapter 266 § 30(1) and Conspiracy in violation of Massachusetts General Laws, Chapter 274 § 7. As stated in our previous decision, the AAO does not need to make a determination in regards to the applicant's admissibility in regards to section 212(a)(2)(A)(i)(I) of the Act, as the applicant is separately inadmissible under sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act.

² The record contains reference to a daughter born to the applicant and her spouse in the past year; however, no birth certificate was submitted for that child.

Counsel also states that the applicant's spouse and his two minor children are suffering from "psychological and mental anguish" as a result of separation from the applicant. As noted previously, hardship to the applicant's children is not considered in section 212(a)(9)(B)(v) or 212(i) waiver proceedings except to the extent it is shown to affect the hardship to the qualifying relative, which in this case is the applicant's spouse. The record contains psychiatric evaluations and intake evaluations of the applicant's spouse and two minor sons completed by Dr. [REDACTED]

[REDACTED] MD, and [REDACTED] LMHC, of [REDACTED] MA. Dr. [REDACTED] diagnosed the applicant's spouse with moderate Major Depressive Disorder and prescribed Celexa and Ambien, in addition to psychoeducation and psychotherapy as a course of treatment. The psychiatric evaluation of the applicant's spouse did not state how the applicant's spouse is specifically being affected by the separation anxiety being experienced by his sons; however, the intake evaluation stated that the applicant's spouse reported feeling "stressed out and depressed" and that his children "ask him about their mother and they are beginning to feel her absence." A letter from the 3rd grade teacher of the applicant and her spouse's son states that the applicant's spouse is an "attentive and caring" father but that he is having difficulty "juggling his time with work and domestic responsibility." Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure some hardship as a result of long-term separation from the applicant, in particular the financial hardship that he has is experiencing supporting two households; however, the record does not establish that the hardships he will face, considered in the aggregate, rise to the level of "extreme."

On motion counsel does not address the deficiencies in the record regarding the hardship that the applicant's spouse would face if he were to relocate to his native Dominican Republic to reside with the applicant. In his statement, the applicant's spouse states that unemployment in the Dominican Republic is 49%, but that statement is not supported in the record. The applicant's spouse has also stated that his children were not able to adapt to life in the Dominican Republic, but again there is no documentation in the record concerning any health problems suffered by the applicant's children while they resided in the Dominican Republic. Although the applicant's assertions regarding his financial and emotional hardship 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). 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 the Dominican Republic, 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(a)(9)(B)(v) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

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. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met this burden. Accordingly, the motion is granted and the prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision is affirmed.