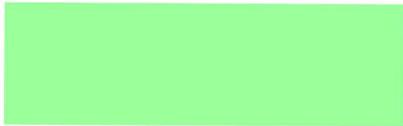




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **JUL 18 2014** Office: OAKLAND PARK, FL

FILE:

IN RE: Applicant:

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

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. On appeal, the AAO affirmed that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact, his marital status, in order to procure an immigration benefit.

On motion, the applicant's spouse claims she will experience extreme hardship upon separation from the applicant and in the event of relocation to Peru. She asserts that due to an automobile accident, she lives in constant pain, and needs neck and back surgery. The spouse indicates that the applicant takes care of her physically, emotionally, and financially, in light of her health problems. She also states that she would not be able to live in Peru, as her and the applicant's relatives are all in the United States, she would worry about her mother and sister who live in Massachusetts, she does not know Spanish, she would have difficulty qualifying and finding a job as a nurse in Peru, she would not have access to the same level of necessary medical care, and she would be in danger due to the adverse country conditions.

The record includes, but is not limited to, the following documents: evidence of birth, marriage, divorce, and citizenship; affidavits from the applicant; copies of the applicant's spouse's medical records; a letter from the spouse's chiropractor; letters from the couple's employers; copies of tax returns, bills, and other financial documents; articles on country conditions in Peru; and other applications and petitions. The entire record was reviewed and considered in rendering this decision on the motion.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows that the applicant married a U.S. citizen (“prior spouse”) on May 19, 1995, and that they divorced on September 27, 1995. On April 22, 1996, the applicant filed a Form I-485 concurrently with his prior spouse’s filing of a Form I-130 on the applicant’s behalf. The record further shows that during the couple’s interview on November 13, 1996, neither the applicant nor his prior spouse indicated they were divorced. The record shows the applicant married his current wife on February 13, 1999. By letter dated April 3, 2000, the applicant “request[ed] the cancellation of the pending petition for alien relative from [his prior spouse] as we are in the process of filing for divorce. As it is obvious, I would appreciate closing my file, since I will no longer be married to the petitioner.”

On appeal, the AAO affirmed the Field Office Director’s finding that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having concealed his marital status to procure an immigration benefit. This finding is not contested on motion. Therefore, we again find that the applicant is inadmissible for misrepresentation of a material fact in order to gain an immigration benefit.

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 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.

The applicant’s spouse claims she will experience medical, emotional, and financial difficulties upon separation from the applicant. She explains she has been with the applicant for nearly 15 years, and that she depends on him for emotional and financial support. The spouse indicates her sister has been dealing with cancer since 1996, and that she, her two sons, and their mother reside in Massachusetts. The spouse asserts that she and the applicant provide for her sister and their mother financially, but because of her medical conditions, she has not been able to visit as often as she wants to.

The spouse contends that she has multiple medical conditions, including herniated cervical and lumbar discs, and lives in constant pain. Medical records and a letter from the spouse’s chiropractor are submitted in support. The chiropractor indicates that the spouse was involved in an automobile accident in 2011 and is currently undergoing electromuscle stimulation, hydroculator, spinal manipulation, and spinal disc decompression. In addition, the chiropractor states that the spouse’s daily activities, especially those at work, exacerbate her condition, and that

she may eventually need spinal surgery. The spouse explains that her current employment as a registered nurse provides her with income and good health insurance, but that she has had to cut her hours due to her health. She contends that the applicant's financial assistance has been essential in making ends meet, as well as his emotional and physical support. Copies of bills and documentation of the spouse's income and leave records are present in the file. The spouse adds that after each procedure, including six epidurals, five femoral nerve blocks, and surgery for a pelvic mass, the applicant has taken care of her by driving her home, buying her medicine, bathing her, and taking her to doctor's visits. Medical records are submitted in support.

The spouse also asserts she would experience severe difficulties if she relocated to Peru. She explains that all her family, and her spouse's family, live in the United States, and she would worry about her elderly mother and her sister with cancer if she were so far away. The spouse contends she has never been to Peru, and she does not speak Spanish, which would negatively impact her ability to communicate in that country and to get a job in her field as a nurse. She states that her inability to find a good-paying job would in turn be detrimental to her mother and sister, as she sends money to them. In addition, the spouse claims there are not many jobs for the applicant in his field, so they would not be able to provide for themselves or continue her medical treatment. Articles on medications and the health care system in Peru are submitted in support. The spouse additionally claims she would be subject to dangerous country conditions, given the crime in Peru. Department of State reports are submitted on motion.

We find there is sufficient evidence of record to demonstrate that the applicant's spouse would experience extreme hardship upon relocation to Peru. The applicant has submitted a letter from his spouse's chiropractor showing that his spouse has medical issues which require continuing medical treatment, and he has submitted documentation to indicate that she will have difficulties accessing adequate medical care and medications in Peru. Furthermore, relocation would entail leaving the spouse's family ties in the United States, moving to a country where the spouse is not familiar with the official language, and where she has no family or other ties apart from the applicant. The applicant has not submitted documentation to substantiate claims that he and his spouse will have difficulties finding employment and providing for themselves financially in Peru, nor is there an indication that the applicant's spouse specifically will be a target of criminals and terrorist activities. However, given the documentation on the spouse's medical needs, the difficulty accessing medical treatment in Peru, her lack of ties in Peru, and her lack of Spanish language skills, we find that the applicant has shown his spouse would experience extreme hardship upon relocation to Peru.

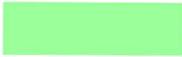
The applicant has not shown, however, that his spouse would experience extreme hardship if the applicant were to return to Peru without her. The applicant's spouse claims that the applicant is essential in assisting her, her mother, and her sister, financially. However, the applicant does not submit evidence of his current income, or documentation, such as money order receipts, to corroborate claims that they send money to her relatives. Although these 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).

The spouse contends she needs the applicant’s assistance in dealing with her medical conditions and helping with recovery. In support of these assertions counsel submitted copies of medical records and bills for the applicant’s spouse, as well as physician’s “progress notes” for medical care in 2013. However, the documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant’s wife, apart from the letter from the chiropractor. The chiropractor indicates that the spouse is undergoing treatment for spine problems, and may need spinal surgery, but he does not state that the applicant’s assistance is necessary in this process, nor is there an explanation from any other physicians on the remainder of her medical conditions and the assistance needed as a result. Absent an explanation in plain language from the treating physician of the exact nature and severity of these other conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions about the assistance the applicant’s spouse requires as a result of these health issues.

While the AAO acknowledges that the applicant’s spouse would face difficulties as a result of the applicant’s inadmissibility, such as emotional hardship, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional, or other impacts of separation on the applicant’s spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Peru without his spouse.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.



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 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 motion is granted, but the underlying application remains denied.