



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

(b)(6)

[REDACTED]
Date: **JAN 21 2015**

Office: MIAMI

FILE: [REDACTED]

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

[REDACTED]
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 waiver application was denied by the District Director, Miami, Florida, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior decision of the AAO is affirmed.

The applicant is a native and citizen of Argentina who was found to be inadmissible to the United States 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 having attempted to procure a benefit under the Act by fraud or willful misrepresentation. 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 lawful permanent resident spouse.

The District Director determined that the applicant was 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), as an alien who has sought to procure admission to the United States through fraud or misrepresentation. The District Director specifically noted that the applicant's first wife had withdrawn her Form I-130 stating, in part, she wanted to help the applicant obtain his residency and he in turn helped with her expenses. The District Director further concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

On appeal, we determined that the record established that the applicant was inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation. We concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was dismissed.

On motion, filed on September 4, 2012 and received by the AAO on November 19, 2014, counsel maintains that the withdrawal of the visa petition by the applicant's first wife cannot be equated with fraud. Counsel further maintains that extreme hardship has been established. In support, the applicant submits the following: an opinion letter from an attorney in Argentina, affidavits from the applicant and his spouse, an affidavit from the applicant's spouse's daughter, financial documentation, and copies of documents previously submitted.

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

....

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

Section 212(i) of the Act provides:

- (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 record establishes that on October 22, 2002, the applicant's first wife, a U.S. citizen, requested that the Form I-130, Petition for Alien Relative (Form I-130), she filed in September 2001, on behalf of the applicant, be withdrawn. The basis for the withdrawal request was her admission that she married the applicant to assist him in obtaining permanent residency and he helped her with her expenses and the marriage was considered invalid. Notes in the file indicate that at the I-485 interview on October 22, 2002, upon being advised that a marriage interview would be conducted and of the penalties for entering into a marriage to circumvent immigration laws, the applicant's first wife chose to withdraw the application for the applicant and rendered the above-referenced statement. The applicant and his first wife divorced in February [REDACTED] and the Form I-130 was withdrawn by the USCIS on July 6, 2003.

With respect to counsel's assertion on motion that the withdrawal of the Form I-130 by the applicant's first wife cannot be equated with marriage fraud, the record contains substantial and probative evidence that the applicant's marriage to his first wife was entered into for the sole purpose of evading the immigration laws. The applicant's first wife specifically admitted, under oath and of her own free will, that the marriage between her and the applicant was not considered valid. On motion the applicant has not submitted any supporting documentation to the contrary. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)). As such, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 qualifying relative, which includes the U.S.

citizen or lawfully resident spouse or parent of the applicant. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant or his wife's daughter can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez*, 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 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 v. I.N.S.*, 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 motion the applicant asserts that his wife will suffer financial hardship were she to remain in the United States while he relocates abroad. He maintains that his wife is totally dependent on him for financial support. In support, he submits bank statements for the period July 12, 2012 to August 9, 2012, a deposit account balance summary from August 17, 2012, an August 17, 2012 pay stub evidencing the applicant's employment, and financial documentation from 2009 and 2010. While the applicant's spouse maintained in an October 30, 2009 affidavit that she was unemployed due to the financial crisis, no documentation has been provided on motion establishing that she has been unable to obtain gainful employment to support herself. Nor has the applicant established that he would be unable to obtain gainful employment in Argentina in order to assist his spouse. The opinion letter provided by an attorney in Argentina stating that the applicant will not be able to obtain employment in Argentina due to age, background, and limited education, is general in nature and does not establish that the applicant specifically will be unable to obtain gainful employment abroad. Finally, no documentation has been provided on motion establishing that the applicant's spouse's daughter is unable to assist her mother should the need arise. The only statement provided from the applicant's spouse's daughter is from October 2009, almost three years prior to the instant motion submission.

As for the emotional hardship referenced by the applicant, on motion the applicant has submitted a clinical history summary from Cuba pertaining to his spouse. The mental health issues referenced in the summary are from 1980, 1985 and 2000, almost 12 years prior to the instant motion filing. The mental health documentation submitted on appeal was from October 2009, almost three years prior to the instant motion filing. While we acknowledge the applicant's spouse's contention that she will experience emotional hardship were she to remain in the United States while her husband relocates abroad, the record does not establish the severity of this hardship or the effects on her daily life. It has thus not been established that the applicant's spouse will experience emotional hardship beyond others who are in the same situation.

We recognize that the applicant's spouse will endure hardship as a result of a long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Based on the evidence provided, it has not been established that the applicant's lawful permanent resident spouse will experience extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility.

With respect to relocating abroad, on motion the applicant has submitted a letter from an attorney in Argentina. The attorney asserts that it is doubtful the applicant's spouse would be able to take up residence in Argentina as a result of her Cuban origin and citizenship. Furthermore, the attorney contends that due to her age and her sex, the applicant's spouse will not be able to obtain employment in Argentina. The attorney has not submitted any documentation in support of his assertion nor does the record establish his expertise in these areas. The record fails to establish that the applicant's spouse, born in Cuba but a lawful permanent resident of the United States, would be unable to reside in Argentina with her husband. As such, extreme hardship upon relocation has not been established.

On motion, the record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. Accordingly, the motion will be granted and the previous decision of this office is affirmed.

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