



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-C-

DATE: SEPT. 21, 2015

APPEAL OF MILWAUKEE FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Tunisia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Milwaukee, Wisconsin, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa to the United States through fraud or material misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, which his U.S. citizen spouse filed on his behalf. The Applicant seeks a waiver of inadmissibility under 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.

The Director, in a decision dated December 17, 2014, concluded that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal the Applicant states that his U.S. citizen spouse will suffer extreme hardship if he does not receive a waiver of inadmissibility. He states that the Director did not properly consider all relevant factors individually and in the aggregate concerning hardship his spouse would experience upon separation and relocation.

The record includes, but is not limited to: biographical information for the Applicant, his spouse, and family members; affidavits from the Applicant and his spouse; criminal records for the Applicant and his spouse; documentation concerning the Applicant's spouse's addiction and treatment; financial records for the Applicant and his spouse; and country-conditions information for Tunisia. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

- (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

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documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record indicates that the Applicant was admitted to the United States on July 7, 2005, as a B2 nonimmigrant visitor with permission to remain in the United States until January 6, 2006. The applicant obtained his B2 visa at the U.S. Consulate in [REDACTED] after submitting a Form DS-156, Nonimmigrant Visa Application, indicating that he was married. The Applicant submitted his visa application on June 28, 2005; however, his divorce from his first spouse had been finalized on [REDACTED] 2004. The Applicant's misrepresentation "shut off a line of inquiry which is relevant to [his] eligibility and which might well have resulted in proper determination..." that he not be granted a nonimmigrant visa, and as a result his misrepresentation was material. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961). As a result of the Applicant's procurement of a visa to the United States through material misrepresentation, he is inadmissible under section 212(a)(6)(C)(i) of the Act. He does not challenge his inadmissibility on appeal.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states that:

- (1) The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. In order to qualify for this waiver, he must first establish that the refusal of his admission to the United States would cause extreme hardship to a qualifying relative. The Applicant's qualifying relative is his U.S. citizen spouse. Hardship to the Applicant will not be separately considered, except as it is shown to affect the Applicant's spouse. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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.

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The Applicant states that his U.S. citizen spouse would suffer extreme hardship if she were to be separated from him. The Applicant and his spouse were married on [REDACTED] 2007. The Applicant and his spouse state that his spouse is addicted to OxyContin and that he is instrumental in helping her avoid relapse, which could result in death or prison for the Applicant's spouse, who has a felony drug conviction and a history of overdose. The Applicant also states that his spouse would suffer profound financial hardship in his absence, as she is not able to obtain or maintain employment due to her felony conviction and her addiction.

In regard to the Applicant's spouse's addiction, the record indicates that the Applicant's spouse, in connection with activities committed on [REDACTED] 2010, was convicted before the State of Wisconsin Circuit Court, [REDACTED] of obtaining a controlled substance by fraud. The record indicates that the Applicant's spouse served three months in jail. The record indicates that the Applicant's spouse continued to suffer from addiction since her conviction and jail sentence, having been hospitalized for a heroin overdose on [REDACTED] 2013. After the Applicant's spouse's overdose, documentation in the record indicates that she attended a day treatment program and, according to a letter dated July 1, 2014, had begun an outpatient treatment program due to progress in her recovery. The letter indicates the Applicant's spouse had demonstrated perfect attendance and would attend group sessions three times a week.

In an affidavit dated August 6, 2014, the Applicant's spouse stated that she is drug free but that it is a constant challenge for her. She states that she attends Narcotics Anonymous and has a sponsor with whom she frequently checks in. She also states that the Applicant has been "unbelievably supportive" of her and "has done everything possible" to help her overcome her addiction. The record, however, indicates that Applicant was arrested twice, in 2010 and 2012, and charged with battery against his spouse. The record indicates that the battery charges did not result in a conviction for battery; however, in relation to the 2010 incident the Applicant's spouse states in her affidavit that the Applicant hit her, and that was why she called police. Her claim that the judge imposed a no contact order is corroborated by a copy of the order in the record. The Applicant violated that order when he contacted her and smashed a computer against the floor. In connection with the 2010 incident, the Applicant was convicted of bail jumping in violation of Wisconsin Statutes § 968.075(1)(a), noted as related to domestic abuse. The Applicant was again arrested for battery on [REDACTED] 2012, but the assistant district attorney declined to prosecute the case. In her 2014 affidavit, the Applicant's spouse does not address the 2012 incident. Counsel for the Applicant in her brief states that the charges in both battery arrests were dropped, because the "criminal court recognized there were extenuating circumstances," specifically that the Applicant's spouse "provoked" him. The Applicant submits no documentation in the record to support counsel's assertion. The unsupported assertions of counsel do not constitute evidence. *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 court documents related to the 2010 incident indicate that the State's witness did not appear in court; in relation to the 2012 incident, the record indicates that the assistant district attorney declined to issue charges. The Applicant's spouse states that her addiction has been a source of frustration for the Applicant and although he "works hard to control his frustration . . . sometimes it gets the best of him."

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The Applicant submits documentation addressing OxyContin addiction and the role that isolation can play in relapse. He states that his spouse will become isolated if she is separated from him and that he supervises her to help her avoid relapsing. The Applicant and his spouse both state that he also controls and monitors her access to money and structures her day. The Applicant's spouse also states in her affidavit that the Applicant is her savior and that her life would fall apart without him. The record indicates that the Applicant's spouse has an adult daughter from a previous relationship, a sister, mother, father, and grandmother who all reside in Wisconsin. Although the Applicant submits biographical information for those individuals, the record lacks letters, affidavits, or declarations from those individuals concerning the hardship to the Applicant's spouse were she to be separated from him. The Applicant's spouse's affidavit is the only documentation indicating that he has been instrumental to her recovery. Moreover, although the Applicant states that she cannot depend on her daughter or others in her family financially, as they have their own financial obligations, she does not state why those individuals provide the emotional and physical support in her recovery that she states the Applicant provides. Although the Applicant's spouse'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)). The record also indicates that the Applicant's spouse has undergone therapy as part of her recovery efforts, but the record does not contain documentation regarding the recommendations of a therapist, nor does documentation from an independent source discuss the Applicant's spouse's treatment plan and the role of the Applicant in her recovery.

The record establishes that the Applicant's spouse suffers from addiction, but the record does not establish that the Applicant is essential to his spouse's recovery. Moreover, although the record indicates that the Applicant's spouse has not held a steady job in recent years, the record indicates that she obtained employment after her conviction. Specifically, a 2012 W-2 Form indicates that the Applicant's spouse earned \$10,357 in income from [REDACTED] that year. The record does not contain documentation that the Applicant's spouse has sought, been denied, or lost employment since that time due to her conviction or her addiction. In addition, although the Applicant's spouse states that she works long hours at the Applicant's auto repair shop and that the business is doing well, she does not report wages from that work. Instead she states that the Applicant controls her access to money, as a result of her addiction. The record does not clearly establish that the Applicant's spouse would be unable to obtain employment and provide for herself in the Applicant's absence. Furthermore, the record does not establish that the Applicant's control of his spouse's access to money is essential to her treatment and recovery. We recognize the serious impact of separation on families, and it is clear that given her circumstances, separation from the Applicant may cause the Applicant's spouse hardship, but the evidence, considered in the aggregate, does not indicate that the Applicant's spouse's hardship would be extreme. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The Applicant's spouse also states that she would suffer extreme hardship were she to relocate to Tunisia with the Applicant. The Applicant's spouse, age 42, is a native of the United States and has extensive family ties to Wisconsin, where she states that she has resided her entire life. She states that she has not traveled outside of the United States and that she does not speak Arabic, the official language of Tunisia. She states that her drug conviction, her inability to communicate, and lack of understanding of the culture would make finding work and establishing relationships difficult for her. The record does not clearly establish whether the Applicant's spouse would be unable to immigrate to Tunisia as a result of her drug conviction, as asserted, but it is likely that her treatment and support options would be limited due to her unfamiliarity with the language and culture and Tunisia's limited treatment resources. The evidence considered in the aggregate, particularly the disruption to the Applicant's spouse's access to treatment for her addiction and her lack of ties to Tunisia, establishes that the Applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the Applicant due to his inadmissibility.

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 in 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 Applicant's mother.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen spouse as a result of their separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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 appeal is dismissed.

Cite as *Matter of I-C-*, ID# 13179 (AAO Sept. 21, 2015)