



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

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

MATTER OF R-R-F-

DATE: FEB. 9, 2016

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(a)(9)(B)(v) and 212(i), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i). The Field Office Director, Los Angeles, California, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated June 19, 2014, the Director found the Applicant to be inadmissible pursuant to sections 212(a)(6)(C)(i) and (ii) for willful misrepresentation and for falsely claiming to be a U.S. citizen. The Director also found that the Applicant was inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), because the Applicant had been ordered removed and seeks admission within 20 years of the date of his last departure. The Director further determined that the Applicant was ineligible to request consent to reapply, because he was still in the United States and had not remained outside for the requisite statutory period.<sup>1</sup>

On appeal, the Applicant asserts that he is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act, because he falsely claimed to be a U.S. citizen prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amendments to the Act, before the effective date of this ground of inadmissibility, and he therefore may seek a waiver under section 212(i) of the Act. Alternatively, the Applicant asserts that his spouse would suffer extreme hardship if his Form I-601, Application for Waiver of Grounds of Inadmissibility, is denied.

The record includes, but is not limited to: a brief, identity and relationship documents, physicians' letters, court records, and financial documents. The record also includes Spanish-language documents that are untranslated. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate

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<sup>1</sup> The Applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, also was denied on June 19, 2014. We have issued a separate decision on his appeal of his Form I-212 denial decision.

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from the foreign language into English. The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering this decision.

The record reflects that on June 7, 1970, the Applicant attempted entry into the United States as a smuggled alien and by falsely claiming to be a U.S. citizen. The Applicant was permitted to voluntarily depart on [REDACTED] 1970. He subsequently re-entered without inspection and, after serving part of a criminal sentence, was deported to Mexico on [REDACTED], 1975.<sup>2</sup> He re-entered without inspection on or about May 1975. After being placed into deportation proceedings, he was deported a second time on [REDACTED] 1976. The record reflects that the Applicant re-entered without inspection in 1977. His first application for lawful permanent resident status was denied on April 21, 1988, for lack of prosecution when he did not appear for his interview appointment, and he was granted voluntary departure. The record is unclear concerning whether the Applicant subsequently departed timely. He was granted temporary resident status on January 25, 1990, until August 22, 1992. In his Form I-485, Application to Register Permanent Residence or Adjust Status, filed on August 6, 2001, under the Legal Immigration Family Equity Act, the Applicant claims his last entry into the United States was on an unspecified date in 1994. This application was denied in 2004, and his appeal was dismissed on July 6, 2007. The record includes evidence that the Applicant left the United States with permission and was paroled in June 2005, before his Form I-485 appeal was dismissed. The record does not reflect departures or re-entries after June 2005. The Applicant is the beneficiary of a Form I-130, Petition for Alien Relative, that his U.S. citizen son filed on his behalf. The related Form I-485, which indicates his last arrival occurred when he was paroled into the United States on June 16, 2005, was denied on June 19, 2014.

Although the Director in her decision refers to the Applicant's inadmissibility under section 212(a)(9) of the Act and quotes the relevant unlawful presence provisions under section 212(a)(9)(B)(i), we do not see support in the record for finding Applicant inadmissible under section 212(a)(9)(B)(i), and the Director does not specify a period of time during which the Applicant accrued unlawful presence. The accrual of unlawful presence for purpose of inadmissibility determinations under section 212(a)(9)(B)(i) of the Act begins no earlier than the effective date of the amendment enacting this section, April 1, 1997. The record shows that the Applicant departed from the United States after April 1, 1997, sometime before his parole in June 2005. In *Matter of Arrabally and Yerrabally*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (the Board) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the Applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. Therefore, the

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<sup>2</sup> The Applicant pled guilty to and was convicted of unlawful sex with a minor, in violation of section 261.5 of the California Penal Code on [REDACTED] 1975. The [REDACTED] Superior Court sentenced him to 14 days in jail and three years' probation. Because the Director did not make a finding of inadmissibility related to this criminal conviction and it will not affect the outcome of his Form I-601 appeal, we will not address it here.

Applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i) of the Act.

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

(i) 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.

(ii) Falsely claiming citizenship. –

(I) In General – Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . or any other Federal or State law is inadmissible.

Section 212(a)(6)(C)(ii) of the Act, for which no waiver is available, applies only to false claims of U.S. citizenship made on or after September 30, 1996. Here, the Applicant made the claim in 1970. The Director’s finding that the Applicant is inadmissible pursuant to section 212(a)(6)(C)(ii) shall be withdrawn. Nonetheless, the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) for willfully making a false representation to gain entry into the United States. The Applicant does not contest that he is inadmissible under section 212(a)(6)(C)(i) of the Act. He seeks a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides:

(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’s qualifying relative for a waiver of inadmissibility is his lawful permanent resident spouse. Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury,” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship “need not be unique to be extreme.” *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

We first consider whether the Applicant’s spouse would experience extreme hardship if she relocates with the Applicant to Mexico. The record includes a letter from a [REDACTED] physician, dated May 8, 2014, stating that the Applicant’s spouse is suffering from cirrhosis, anemia, hepatitis C and abdominal ascites. The physician does not specify how long he has treated the Applicant’s spouse, while stating she “is constantly in . . . treatment” and that the Applicant is her primary caregiver. He also does not describe the severity of the Applicant’s spouse’s conditions and what her treatment entails. The Applicant also submitted a letter from a psychiatric social worker with the [REDACTED] [REDACTED] dated May 8, 2014, certifying that the Applicant receives psychiatric mental health treatment and case management services, that he was diagnosed with paranoid schizophrenia, and that he has been prescribed medication for his condition.

The record reflects that the Applicant’s spouse is a 55-year old native of Mexico who became a U.S. lawful permanent resident in 2011. The record also includes birth certificates of their three adult U.S. citizen children.

The Applicant, through counsel, asserts on appeal that given his age, he would be unemployable in Mexico and that the economy in Mexico is “grim.” The Applicant, again through counsel, adds that his wife would not find employment in Mexico because of her medical condition and lack of experience. The Applicant provides no evidence to corroborate counsel’s claims. 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 Applicant has not submitted evidence of conditions in Mexico that would support concluding his spouse’s medical conditions, or his own medical condition, could not be treated there. Moreover,

while evidence of hardship to the Applicant may be considered to the extent it causes his spouse hardship, the Applicant submits no evidence describing the effect of his medical condition on his spouse and whether she would experience hardship related to this condition if they resided in Mexico together. Although it is reasonable to conclude that the Applicant's spouse may experience a degree of emotional hardship if she were to relocate, owing to being farther away from their adult children, the record lacks evidence to support this conclusion. Other than two medical letters, the Applicant submits no evidence to show that his spouse would experience emotional, financial, or other types of hardship, were she to relocate with him to Mexico. Thus, when considered in the aggregate, we find that the evidence of the record is insufficient to demonstrate that the Applicant's spouse would suffer extreme hardship if she were to relocate to Mexico with him.

We will next consider whether the Applicant's spouse would experience extreme hardship if she is remains in the United States without the Applicant. The Applicant submitted a physician's letter listing his spouse's medical ailments, as described above. While the Applicant, through counsel, asserts that the record includes "ample evidence of extreme hardship" that his spouse would experience without the Applicant, the record includes no other evidence concerning hardship to the Applicant's spouse.

The physician's letter, while noting that the Applicant's spouse depends on the Applicant for assistance, does not address the conditions in detail, the assistance the Applicant provides, or the possibility of other family members providing assistance. The record lacks evidence of financial, emotional, or other types of hardship that could be considered in the aggregate to determine whether the Applicant's spouse's hardship would be extreme. We find that the evidence is insufficient to demonstrate that the Applicant's spouse would suffer extreme hardship if she remained in the United States without the Applicant.

As the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-R-F-*, ID# 14334 (AAO Feb. 9, 2016)