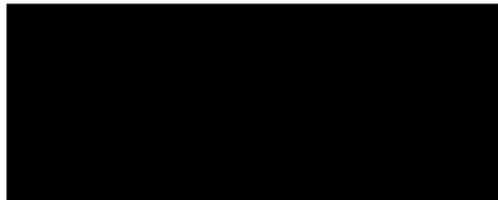


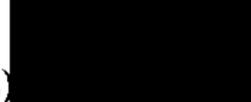
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



ht6



DATE: **AUG 02 2012** OFFICE: TEGUCIGALPA FILE: 
(relates)

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under 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 his spouse.

In a decision dated August 25, 2010, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly. The application was also denied as a matter of discretion.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant's spouse will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, declarations from the applicant's spouse, declarations from family and friends of the applicant's spouse, financial documentation for the applicant's spouse, biographical information for the applicant, his spouse, and their children, psychiatric evaluation of the applicant's spouse, letter of offer of employment for the applicant, photographs and travel documentation for the applicant and his spouse, and documentation of the applicant's immigration history.

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. Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant reports that he entered the United States without inspection on or about July 4, 1998. The applicant was placed into removal proceedings and granted voluntary departure on October 10, 2007. The applicant departed the United States on February 5, 2008, in accordance with the voluntary departure granted by the Immigration Judge. The applicant accrued unlawful presence in the United States from his entry without inspection through the grant of voluntary departure. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The AAO notes that the record also indicates that January 26, 2003, the applicant was arrested for Driving Under the Influence, Driving While License Suspended With Knowledge, and Restricted License Violation in violation of Florida Statute sections 316.193, 322.34(2)(a), and 322.16. The applicant was later arrested on September 4, 2004 for Driving License Suspended Knowingly, and on September 21, 2005, again for Driving Under the Influence. In *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001), the Board of Immigration Appeals (BIA) held that a simple DUI conviction is not a crime involving moral turpitude unless the alien is convicted under a state statute that requires a culpable mental state. But, in *Matter of Lopez-Meza*, 22 I.&N. Dec. 1188, 1196 (BIA 1999), the Board held that moral turpitude inhered in the offense of aggravated driving under the influence, which involved the combination of driving under the influence of intoxicating liquor or drugs and knowingly driving on a suspended, canceled, revoked, or refused license.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime ... is inadmissible.
- (ii) Exception.--Clause (i)(I) shall not apply to an alien who committed only one crime if-
 - (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison

or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)... of subsection (a)(2)... if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien ...; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant has not submitted a full record of conviction for his arrest. This documentation should be submitted in any future proceedings, so that a determination can be made concerning his admissibility in regards to section 212(a)(2)(A)(i)(I) of the Act. The AAO does not need to make a determination on that matter at this time, as the applicant is separately inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The applicant is eligible to apply for a waiver of his inadmissibility under 212(a)(9)(B)(i)(II) of the Act pursuant to section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen. In order to qualify for this waiver; however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant or the applicant's U.S. citizen children will not be separately considered, except as it may affect 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).

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 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.

On appeal, counsel for the applicant states that the applicant's spouse is suffering and will continue to suffer emotional, financial, and physical hardship in the applicant's absence. Counsel and the applicant's spouse state that the applicant's spouse was forced to move out of her home after the applicant's departure from the United States. The applicant's spouse also states that she was not able to maintain her certification as a nursing assistance and now only works around 20 hours a week at Kentucky Fried Chicken, earning approximately \$220 per week. She also states that she and her four children are residing with her mother, sharing a small space, and that she is receiving food stamps from the State of Florida. Documentation in the record confirms that the applicant's spouse is employed by Kentucky Fried Chicken working 20 plus hours per week, was qualified for food stamps from the State of Florida, and resides with her mother. Photographs in the record show a set of bunk beds crowded into a small room with an air conditioner. The information submitted, however, does not provide a complete picture of the applicant's spouse's financial situation. There is no documentation of the applicant's spouse's expenses or her stated inability to maintain her certification as a nursing assistant. The applicant's spouse has not submitted tax returns or pay stubs to show her income now and prior to the applicant's departure. Although the record contains an offer of employment for the applicant should he be able to return to the United States, the record does not contain of any documentation of the applicant's contribution to the household prior to his departure. Additionally, there is no evidence in the record to indicate where the applicant's spouse has obtained funds for her and her children's visits to Honduras to see the applicant. Although the record suggests that the applicant's spouse is suffering from financial hardship, the applicant's spouse has not provided full evidence of her current income or full records of her expenses. Although the applicant'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)). 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, it is not possible to determine the degree of financial hardship suffered by the applicant's spouse. The

record also makes clear that the applicant's spouse is suffering from some degree of emotional hardship due to separation from the applicant. A letter from Dr. [REDACTED] states that the applicant's spouse suffers from Major Depression, which is recurrent and severe. According to Dr. [REDACTED] the applicant's spouse is taking medication for her depression. She also reports that since the applicant departed the country, the applicant's spouse's "...life and her mental health has deteriorated severely." It is not clear, however from the report whether Dr. [REDACTED] evaluated and/or treated the applicant's spouse prior to the applicant's departure and/or whether she evaluates her on an ongoing basis. The date of the applicant's departure from the United States was February 5, 2008 and the date of the psychiatric evaluation was September 22, 2010. Although the AAO respects the opinion of the medical professional, the evaluation does not make clear the basis for the doctor's conclusion that the mental health of the applicant's spouse has deteriorated severely. The evaluation also does not make clear whether the applicant's spouse's condition is controlled by medication. The AAO also notes that the doctor makes mention of the mental health of the applicant's daughter; however, the applicant's daughter is not a qualifying relative for the purposes of a waiver under section 212(a)(9)(B)(v) of the Act. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's spouse would suffer were she to relocate to Honduras to reside with the applicant, counsel for the applicant states that the applicant's spouse is unable to relocate to Honduras due to the risks that her children would face in that country. In particular, counsel for the applicant states that the risk of gang violence and the lack of educational opportunities in Honduras lead the applicant to believe that she would not be able to offer her children a safe and secure living environment there. As noted above, Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant's children, including stepchildren, will not be separately considered, except as it may affect the applicant's spouse. There is not sufficient information in the record to make a determination that hardship to the applicant's spouse's children would cause the applicant's spouse extreme hardship upon relocation to Honduras. The applicant did not submit documentation regarding how the country conditions in Honduras would affect his spouse. Additionally, the record indicates that the applicant's spouse is a native of Nicaragua, speaks Spanish, and has traveled to Honduras on numerous occasions with her children; however, she does not state why she would suffer hardship if they were to reside there with the applicant. Again, 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. at 165; *see also Matter of Obaigbena*, 19 I&N Dec. at 534 n.2 (BIA 1988). 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 Honduras, 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 section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relative as required under section 212(a)(9)(B)(v) 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 proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.