

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



H6

DATE **DEC 05 2012** OFFICE: SAN DIEGO, CA



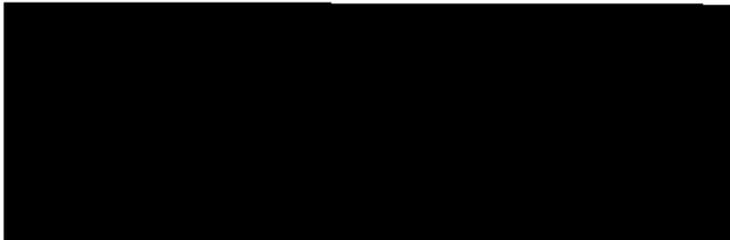
IN RE:

APPLICANT:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 in accordance with the instructions on 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico 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 more than one year and seeking readmission within 10 years of his last departure from the United States. He was additionally found to be inadmissible pursuant to section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for smuggling his daughter into the United States in 1984. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen mother and son.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 15, 2011.

On appeal, counsel for the applicant submits a brief, copies of previously submitted declarations, a psychological evaluation, and medical records. Counsel contends the applicant's mother would experience extreme psychological, medical, and financial hardship given separation from the applicant. Counsel additionally asserts the applicant's mother would experience medical and emotional difficulties if she relocated to Mexico.

The record includes, but is not limited to, the documents listed above, evidence of birth, residence, and citizenship, articles on country conditions in Mexico, statements from the applicant's mother and sister, a letter from a physician, evidence of income, and other applications and petitions filed on behalf of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(E) Smugglers – (i) in General. – Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The applicant admitted under oath that in 1984, he smuggled his daughter into the United States while entering without inspection, and he left in 1987. He is therefore inadmissible pursuant to section 212(a)(6)(E) of the Act, and requires a waiver under section 212(d)(11) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(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 also admitted he entered the United States without inspection in January 2000 and returned to Mexico in October 2010. Inadmissibility is not contested on appeal. Therefore, the AAO finds that the applicant accrued more than one year of unlawful presence, from January 2000 until October 2010, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen mother.

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 mother claims she has several medical conditions, partially due to her age, and the applicant is the one who takes care of her. The mother's physician states in a letter that the mother has multiple medical problems including moderate pain and arthritis of the knees. He further opines that the mother needs assistance with cooking, cleaning, and bringing her to medical appointments. The physician adds that without the applicant, the mother may have to reside in a skilled nursing facility for care. Counsel, referring to medical records, contends that the mother

has hypercholesterolemia, arthritis, hearing difficulties, difficulty ambulating, forgetfulness, a broken shoulder, and other health problems. The mother asserts that the applicant helps her financially as well, and that her only other income besides what the applicant provides is \$845 a month from social security. A bank statement is submitted in support. She claims that four of her children reside in Mexico, and are unable to help her financially. The mother contends that although she lives with one of her daughters in California, her daughter is unable to assist her with everyday living and with money because she is a single mother with a limited income. The record contains a letter from the applicant's sister in California, who states that the applicant takes their mother to the doctor and the hospital, picks up prescriptions, and keeps her company. A licensed clinical psychologist opines in an evaluation that the mother suffers from adjustment disorder and anxiety with severe depressed mood.

The mother also asserts that, although she was born in Mexico, she cannot live there. She states that due to her age, finances, and medical conditions, returning to Mexico would be emotionally and physically difficult. She adds that her four children in Mexico live meager lives there, and sometimes need her financial assistance. Articles on country conditions in Mexico are submitted in support. Counsel claims that the mother's medical needs will not be met in Mexico, and that moving there would cause additional mental, emotional, and physical health problems.

Counsel contends the applicant's mother has several medical conditions, which include hypercholesterolemia, arthritis, hearing difficulties, difficulty ambulating, forgetfulness, a broken shoulder. In support of these assertions counsel submitted copies of medical records for the applicant's mother. The records consist of laboratory results and physician's "progress notes" for medical care from 1998 to 2011. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's mother suffers from such conditions. The record contains copies of medical records, including progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. 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 mother. The only explanation in plain language from the treating physician indicates that the mother has arthritis in her knees, moderate pain, and "multiple medical problems." The physician does not explain what those other medical problems are, nor is there an explanation of why arthritis and moderate pain would require placement in a nursing facility if the applicant were unavailable to assist his mother. Without these explanations and supporting evidence, the AAO is not in a position to reach conclusions about the medical hardship the mother will experience without the applicant present.

The record contains evidence to show that the applicant's mother received a social security payment of \$825 in September 2010. However, there is no evidence to support assertions that this income is supplemented by money the applicant provides. Furthermore, the record does not contain documentation, such as monthly bills, to demonstrate that her expenses exceed her income, or that living with her daughter does not help her meet her financial obligations. Although the mother'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).

The record contains evidence demonstrating that the mother has some psychological issues, which include adjustment disorder and anxiety with severe depressed mood. While the AAO acknowledges that the applicant’s mother would face difficulties as a result of the applicant’s inadmissibility, 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 parent 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 remains in Mexico without his mother.

The mother’s contentions with respect to living in Mexico are not supported by evidence of record. The record indicates the applicant was born in Mazatlan, Sinaloa, Mexico, and resided there from 1987 to 2000. The applicant fails to submit documentation demonstrating that there are insufficient resources in Sinaloa to treat his mother’s arthritis and pain issues. Furthermore, although the applicant submits articles on adverse country conditions in Mexico, the record does not show that the mother will be targeted for crime in Sinaloa, Mexico, nor is there evidence to show why the applicant’s mother, who was born in Mexico, could not live with any of her four children who reside in Mexico.

The AAO notes that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the mother’s difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant’s mother are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant’s parent relocates to Mexico.

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 U.S. Citizen parent 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 the applicant merits a waiver as a matter of discretion. Further, as the applicant is otherwise inadmissible, no purpose would be served in determining whether he is eligible for a waiver under section 212(d)(11) of the Act.

In proceedings for a 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.