

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



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



H6

DATE: **DEC 19 2012**

Office: LIMA, PERU

FILE: 

IN RE: Applicant: 

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 request 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, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uruguay who was found to be inadmissible to the United States under 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. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative (I-130). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated August 16, 2011.<sup>1</sup>

On appeal, counsel for the applicant states that the Director failed to consider in the aggregate the hardships that the qualifying spouse would suffer if the waiver application were denied. Counsel asserts that the qualifying spouse suffers from depression and severe allergies, that she cares for her son and her ill mother in the United States and has other close family ties here, and that she would lose her job and her home if she were to relocate to Uruguay. Counsel claims that those factors, when considered together, demonstrate extreme hardship for the qualifying spouse.

The record includes, but is not limited to: statements from the qualifying spouse and the applicant; medical records relating to the qualifying spouse and her mother; financial records; letters from the qualifying spouse's employer and religious leader; a marriage certificate; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

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-

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<sup>1</sup> The Director also noted that the applicant may be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresenting his length of stay in the United States in an effort to avoid a finding that he had been unlawfully present. However, the Director did not make a final decision regarding the applicant's inadmissibility on that ground. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver for willful misrepresentation under section 212(i), the AAO will not determine whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

(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.

In the present case, the record reflects that the applicant entered the United States through the visa waiver program on or about August 23, 2002 with authorization to remain for 90 days but did not depart until November 4, 2007. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) 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 applicant is eligible to apply for a waiver of inadmissibility under 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. 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 U.S. 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. INS*, 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.

The AAO finds that the applicant has failed to establish that his qualifying spouse would suffer extreme hardship on relocation to Uruguay if the waiver application were denied. The qualifying spouse states that if she were to join the applicant in Uruguay, she would be forced to abandon her ill mother, who relies on her for support. The AAO recognizes that the qualifying spouse's U.S. citizen mother is elderly and that she suffers from several serious health issues. However, while the qualifying spouse claims that her siblings live far away and therefore cannot assist in caring for her mother, she indicates in her own affidavit that one sibling lives in Union City, New Jersey, the same town as her mother's doctor, and another lives approximately one hour away in Bethlehem, Pennsylvania. The qualifying spouse's claim that her siblings cannot assist in her mother's care is insufficient, without supporting evidence, to establish that her mother would lack support in her

absence. Finally, while the qualifying spouse states that being separated from her mother would be difficult emotionally, separation from family members is a common result of inadmissibility or removal and does not typically reach the level of extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568.

Additionally, while the qualifying spouse claims that her U.S. citizen son lives with her and relies on her, he is an adult born in 1989 and there is no evidence that he requires special care. The record contains one report from a probation officer indicating that the qualifying spouse's son is under supervision, but this single report does not establish that he needs extra care from his mother.<sup>2</sup> *See Letter from Traci Eason, Senior Probation Officer*, dated September 8, 2011. Furthermore, even if the qualifying spouse's son did require special supervision, his father and other relatives live nearby and there is no indication that they could not provide the necessary support. Finally, although the qualifying spouse states that her son would have to relocate with her to Uruguay and would have difficulty adjusting to life there, there is no evidence that he would be required to do so, as he is an adult and a U.S. citizen.

Although the qualifying spouse also claims that she would face diminished employment and educational opportunities in Uruguay, such difficulties do not establish extreme hardship. *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994). Furthermore, while the qualifying spouse is concerned about safety in Uruguay, country conditions evidence does not support a finding that the country is so unsafe as to create a situation of extreme hardship for the qualifying spouse. The State Department report on Uruguay indicates that U.S. citizens should "take common-sense precautions" near protests, that "petty street crime" is prevalent in the capital, and that some violent crime has occurred toward foreign tourists. *See U.S. Department of State, Country Specific Information: Uruguay*. The qualifying spouse also claims that she is afraid to be alone in Uruguay and that she cannot go out at night as she would do in the United States. These conditions do not reach the level of extreme hardship. Finally, counsel for the applicant states that the qualifying spouse is a practicing Buddhist who would be separated from her religious teachers and fellow practitioners if she were to relocate, but there is no evidence that the applicant could not continue to practice Buddhism in Uruguay.

The applicant has also failed to establish that his qualifying spouse would suffer extreme hardship on separation from the applicant. The qualifying spouse asserts that she suffers from serious medical conditions, including severe allergies and depression, which create extreme hardship for her in the applicant's absence. However, the medical records she has submitted do not support a finding that her health conditions are severe enough to cause extreme hardship. First, although the qualifying spouse claims that she suffers from severe stress-related allergies, a letter from her doctor states that the qualifying spouse "has a possible diagnosis" of a rash which is "benign and noncontagious." *Letter from Amy Patel, MD*, dated February 23, 2011. [REDACTED] also states that the cause of the rash

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<sup>2</sup> Although counsel for the applicant claims that the qualifying spouse's son has been incarcerated and has mental health issues, there is no evidence of this in the record. 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).

is unclear, and that she should undergo further allergy testing. *Id.* Despite the qualifying spouse's claim that her allergies are life-threatening, there is no indication in the record that she utilized [REDACTED] referral to seek further testing in an effort to resolve the problem. *Id.* Additionally, while the qualifying spouse indicates that her doctor in Uruguay has found her allergies to be caused by stress, one medical document from that doctor is untranslated and the other lacks a certificate of translation. These documents cannot be considered because they do not meet the requirements of 8 C.F.R. § 103.2(b)(3). Finally, while the qualifying spouse asserts that her allergies led to an episode of life-threatening anaphylactic shock, the hospital records from that incident diagnose her with an "acute allergic reaction." *Palisades Medical Center, Discharge Instructions*, dated May 19, 2011. While the AAO recognizes that the qualifying spouse suffered the allergic reaction while at work and was taken to the emergency room, the medical documents in the record do not support the qualifying spouse's claim that the reaction was life-threatening or that her allergies are so severe that they rise to the level of extreme hardship.

The evidence of record also fails to support a finding that the qualifying spouse suffers from depression so severe as to constitute extreme hardship. A letter from her psychiatrist indicates that the qualifying spouse suffers from depression and takes prescription antidepressant medication. *Letter from [REDACTED]*, dated February 2, 2011. However, there is no evidence that the qualifying spouse's depression has prevented her from continuing her daily activities, including working, supporting her son, and caring for her mother. While the qualifying spouse claims that her depression interferes with her ability to work, there is no support for that claim in the record. 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 qualifying spouse also claims that she needs the applicant's assistance in caring for her mother. However, as discussed *supra*, there is no indication that the qualifying spouse's siblings, who live nearby, cannot assist in their mother's care.

Finally, the qualifying spouse asserts that visiting the applicant in Uruguay causes financial hardship for her due to the cost of the trip and lost income. She also states that when she visits the applicant during the summers, she is unable to attend interviews and therefore loses employment opportunities for the following year. Additionally, she indicates that her three-month stays in Uruguay interfere with her responsibilities as a landlord. However, the qualifying spouse's trips to Uruguay are voluntary and can be scheduled during a time that will not interfere with her work or other responsibilities.

Even when considered in the aggregate, the qualifying spouse's concerns do not reach the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of O-J-O-*, 21 I&N Dec. at 383. The AAO therefore finds that the applicant has failed to demonstrate extreme hardship to his U.S. citizen spouse 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.

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.