



H6

DATE: **DEC 21 2012**

Office: PANAMA CITY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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, and section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for departing the United States while an order of removal was outstanding and then seeking admission within 10 years of the date of his departure or removal. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The 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 July 28, 2011. The Director also concluded that the applicant had failed to demonstrate that he merited a favorable exercise of discretion. *Id.*

On appeal, counsel for the applicant asserts that the applicant's U.S. citizen spouse and daughters have experienced extreme hardship since the applicant's removal to Colombia and that they will continue to do so if the waiver application is denied. Counsel states that the qualifying spouse has been diagnosed with depression and anxiety and that she is experiencing financial difficulties. Counsel also claims that the applicant's daughters are suffering emotional and psychological hardship in the applicant's absence. Finally, counsel states that the applicant's spouse and daughters are afraid to live in Colombia due to the violence there and that it would be difficult for the applicant and his spouse to find work to support their family in Colombia.

The evidence includes, but is not limited to: statements from the applicant, the qualifying spouse, the applicant's daughters, and several relatives and friends; country conditions information; financial records; and medical records. 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-

....

(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 without inspection in 1986. In March 1989, he was arrested for possession of narcotics. The charges against him were dropped, but he was transferred to the custody of the Immigration and Naturalization Service (INS) and placed in deportation proceedings. On June 22, 1989, he received an order of voluntary departure with instructions to depart the United States by July 31, 1989. The applicant failed to depart and a Warrant of Deportation was issued against him.

The applicant and [REDACTED] now his qualifying spouse, have two daughters born in the United States in 1990 and 1994. On March 24, 1995, the applicant married [REDACTED] a U.S. citizen, who filed a Form I-130, Petition for Alien Relative (I-130), on his behalf on June 2, 1995. The applicant also filed a Form I-485, Application to Register Permanent Residence or Adjust Status (I-485), on March 6, 1996, based on his marriage to [REDACTED]. On his I-130 and I-485 applications, the applicant indicated that he had entered the United States in 1991, that he had never been arrested, that he had never been in immigration proceedings, and that he had no children. During the applicant's interview for adjustment of status based on his marriage to [REDACTED], the INS noted that he had a second A-file reflecting an outstanding Warrant of Deportation. The INS therefore denied his adjustment of status application.

On August 24, 1995, the qualifying spouse married [REDACTED] a U.S. citizen, who filed a Form I-130 on her behalf on January 30, 1997. She filed an application for permanent residence on October 20, 1997. On her I-130 and permanent residence application, the qualifying spouse indicated that she had no children. The qualifying spouse obtained permanent residence and eventually U.S. citizenship through those applications. She divorced [REDACTED] on June 14, 2004.

The applicant divorced [REDACTED] on April 26, 2007 and married the qualifying spouse on June 8, 2007. On September 11, 2007, the qualifying spouse filed an I-130 petition on the applicant's behalf, on which she indicated that the applicant had never been in immigration proceedings. The Form I-130 was approved and the applicant appeared for an adjustment of status interview on June 2, 2009, at which time he was taken into custody by Immigration and Customs Enforcement (ICE) based on his outstanding Warrant of Deportation. The applicant was removed to Colombia on June 17, 2009, almost 20 years after he was ordered to depart the United States. 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 last departure. The applicant does not contest this finding of inadmissibility on appeal.

The evidence indicates that the applicant also may be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a visa or benefit through fraud or misrepresentation by failing to disclose his prior arrest and removal order, his correct date of entry into the United States, and his children on his I-130 and I-485 applications. However, the AAO need not make that determination at this time.

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. Hardship to the applicant or the applicant's U.S. citizen daughters is not directly relevant under the statute and will be considered only insofar as it results in hardship to the qualifying 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 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.

On appeal, the qualifying spouse asserts that she and the applicant have been in a relationship since before he entered the United States in 1986. She indicates that she and her daughters depend on the applicant for emotional and financial support. She states that she has been depressed in the applicant’s absence and that she has struggled to maintain her household as a result. A mental health assessment also indicates that the qualifying spouse has “adjustment disorder with depression and anxiety” due to her loss of the applicant’s emotional and financial support and that she is experiencing anxiety attacks and physical symptoms, including weight loss, stomach aches, and hair loss, as a result of her depression. *Mental Health Assessment*, [REDACTED] LMFT, dated October 4, 2011. Several friends and relatives, as well as the qualifying spouse’s employer, confirm that the qualifying spouse has appeared depressed, that she has been withdrawn and isolated from the family, and that she is in deep despair over the absence of the applicant. The qualifying spouse’s friends and relatives also state that she is struggling to cover the costs of supporting her daughters and that separation from the applicant has been extremely difficult for the entire family. The applicant’s eldest daughter states in a letter that she must work to contribute to the household finances in the applicant’s absence. *Letter from* [REDACTED]. Additionally, the applicant’s sister indicates that she has become responsible for contributing to the expenses of the applicant’s family in the United States as well as the applicant’s expenses in Colombia. *Letter from* [REDACTED] dated March 11, 2010.

The record also contains significant information regarding the effect of the applicant’s absence on his two U.S. citizen daughters. However, the applicant’s daughters are not qualifying relatives for

purposes of a waiver under section 212(a)(9)(B)(v), so hardship to them can only be considered insofar as it affects the qualifying spouse.

The AAO finds that the qualifying spouse has suffered extreme hardship in the United States on separation from the applicant. The evidence establishes that as a result of the applicant's absence, the qualifying spouse is suffering from serious depression which has affected her ability to maintain her relationship with her family and carry out her daily responsibilities. The evidence also demonstrates that the qualifying spouse has struggled to meet her financial obligations without the applicant's income and that her relatives and daughter have therefore had to contribute to the household finances. In the aggregate, these factors constitute extreme hardship for the qualifying spouse in the applicant's absence.

However, the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship upon relocation to Colombia. Counsel states in his brief that the applicant and his spouse would be unable to earn sufficient income in Colombia to support their family. However, there is no evidence in the record to support that claim and neither the applicant nor his qualifying spouse express that concern. 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)). Without documentary evidence to support a 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).

Similarly, while counsel claims that the qualifying spouse is afraid to live in Colombia due to the violence there, the qualifying spouse does not make such a claim and there is insufficient evidence in the record to support a finding that she would suffer extreme hardship in Colombia. Although counsel submitted two generalized reports containing information regarding violence in Colombia, those reports do not establish that the qualifying spouse in particular would be in danger there. Furthermore, the evidence indicates that the applicant has been living in Cali, so it is reasonable to conclude that the qualifying spouse would join him there. The current U.S. Department of State Travel Warning for Colombia does not mention Cali and states that although violence continues in some areas of the country, "[s]ecurity in Colombia has improved significantly in recent years . . . ."

Although the AAO recognizes that the qualifying spouse has lived in the United States for many years and has family here, she has not claimed that she would be unable to relocate to Colombia. The mental health assessment in the record indicates that the qualifying spouse has family in Colombia, with whom the applicant is currently living. *Mental Health Assessment*, [REDACTED] Ph.D., LMFT. Even when considered in the aggregate, the difficulties the qualifying spouse may face in Colombia do not reach the level of extreme hardship.

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. at 632-33. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

The AAO also notes that even if the applicant had established extreme hardship to a qualifying relative, he would be ineligible for a waiver as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's unlawful presence of over 20 years, for which he now seeks a waiver; his failure to depart pursuant to a voluntary departure order; and his misrepresentations of his immigration, criminal, and family history on various immigration applications in an effort to obtain adjustment of status. The favorable factors are the extreme hardship the qualifying spouse would suffer on separation from the applicant; the applicant's long period of residence in this country; and his family ties here. The AAO must "balance the adverse factors evidencing [the applicant's] undesirability as a permanent resident with the social and humane considerations presented on [his] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Matter of Mendez*, 21 I&N Dec. 296, 300 (BIA 1996). The AAO finds that the applicant's immigration violations and pattern of misrepresentations are serious negative factors which are not outweighed by the favorable factors in his case.

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.