



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: DEC 23 2012 Office: PANAMA CITY, PANAMA FILE: [REDACTED]

IN RE: [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:

[REDACTED]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 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 Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(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 seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen mother.

In a decision, dated October 6, 2011, the field office director found that the applicant had failed to establish extreme hardship to his U.S. citizen mother as a result of his inadmissibility and denied the application accordingly.

On appeal, counsel states that the applicant's mother's mother is suffering from Alzheimer's disease, has a husband with a heart condition, and would suffer extreme hardship as a result of the applicant's inadmissibility. Counsel submits new evidence on appeal.¹

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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

¹ Counsel makes numerous references to the applicant applying for permission to reapply for admission (Form I-212). The record does not indicate that the applicant ever applied for a Form I-212 or that he requires permission to reapply for admission as the record does not indicate that he was removed from the United States.

Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(1) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (1).

...

(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 record reflects that the applicant, who was born on April 8, 1981, entered the United States on September 6, 1998 using a visitor's visa. The applicant did not depart the United States until December 29, 2008. The applicant was unlawfully present in the United States from the time he turned 18 years old, on April 8, 1999, until the date he departed the United States in December 2008. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States for more than one year. The applicant's qualifying relative 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 v. I.N.S.*, 138 F.3d 1292 (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 record of hardship includes: a letter from counsel, a statement from a licensed social worker, medical articles, medical records, three statements from the applicant's mother, letters from other family members, a psychological evaluation, and financial documentation.

We find that the record does not establish that the applicant's mother would suffer extreme hardship as a result of relocation or as a result of continued separation. The applicant's mother claims and the record supports that the applicant's grandmother is suffering from Alzheimer's and requires 24 hour care. However, the record indicates that the applicant's mother has six siblings, three living in Northern Virginia, and three living in Ecuador. The applicant's mother states that

her mother is living in a home where she has 24 hour care, but that her siblings who live in Virginia do not fully accept the extent of their mother's condition. The record fails to establish why the applicant's grandmother would not be able to relocate with the applicant's mother to Ecuador, where three of her children reside. The applicant's mother states further that her current husband would not be willing to relocate to Ecuador. The applicant's mother's husband has stated that he suffers from heart disease, does not want to move to Ecuador because he does not want to leave his health care in the United States, has no ties to Ecuador, and has two children in the United States. Beyond the applicant's mother's spouse's statement the applicant has not provided any documentation to support the assertions regarding his mother's husband. The applicant's mother states that although she was a dentist in Ecuador, she has not worked in Ecuador for 13 years, and she would not be able to reestablish her dental practice. Again, the applicant's mother has failed to submit any documentation to support these assertions. Similarly, we note that throughout the record numerous assertions have been made regarding country conditions in Ecuador, but the record contains no documentation to support these claims. The assertions in the record are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We acknowledge that the applicant's mother has family ties to the United States, including her mother, husband, daughter, and three sisters. However, the applicant's mother also has a lengthy history of residing in Ecuador with significant family ties and previous professional ties to the country. Thus, the current record does not establish that the applicant's mother will suffer extreme hardship as a result of relocation.

Furthermore, the record does not establish that the applicant's mother will suffer extreme hardship as a result of the continued separation from her son. The record indicates that the applicant is currently enrolled at a university in Ecuador, is self-employed as a computer and cell phone repairman, and has a 10 month old son in Ecuador. As mentioned above, the record also indicates that the applicant has one aunt and two uncles living in Ecuador. The applicant's mother claims that she is suffering depression, is taking depression medication, and needs her son in the United States for financial support. The record also states that the applicant's absence is causing his mother chronic stress, which is affecting her health and causing precancerous polyps on her colon.

The AAO notes that the record does not include documentation to show that the applicant's mother requires her son's financial support. A medical record from May 2010 shows that the applicant's mother had precancerous polyps on her colon, but the record does not indicate any further treatment for this issue or the seriousness of this condition. The record also includes a medical letter indicating that the applicant's mother had surgery for kidney stones in March 2012, but failed to indicate the seriousness of this condition. We acknowledge that the applicant's mother is suffering emotional stress as a result of her son's absence, but the record does not indicate that she is experiencing stress that is beyond what others in the same situation would

experience. The record shows that in May 2010 the applicant's mother was taking anti-depressant medication. The current mental health evaluation, dated February 27, 2012, states that the applicant's absence is causing his mother significant stress and that the chronic stress in her life could lead to more medical problems. We note that this evaluation was performed by a licensed social worker, who has not provided evidence that he is qualified to make a diagnosis as to the applicant's mother's immune response to stress. Moreover, none of the medical documentation submitted makes reference to the applicant's mother's increased levels of stress. In addition, the evaluation makes no mention of the applicant's mother continuing to take anti-depressant medication. We note that on appeal, current counsel claims that the mental health evaluation, dated August 2010, was improperly done, so it will not be considered on appeal. Thus, we find that the applicant has failed to show that the stress his mother is experiencing rises to the level of extreme and that she is experiencing extreme hardship as a result of separation.

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 mother 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 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.