

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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: JUN 13 2012 OFFICE: CIUDAD JUAREZ 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 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, Ciudad Juarez, Mexico, 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 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 December 3, 2009, 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 documentation submitted establishes 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 briefs by counsel for the applicant, statements from the applicant's spouse, documentation regarding the applicant's spouse's finances, medical records for the applicant's family in the United States, letters from family members and friends, biographical information for the applicant, biographical information for the applicant's spouse and child, 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 was found to be 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 record illustrates that the applicant entered the United States without inspection in 1997 and remained in the United States unlawfully through September 2008, accruing unlawful presence from the period for which he was present after April 1, 1997 when the unlawful presence provisions of the Act went into effect, until his departure from the United States. As the period of unlawful presence accrued is over one year, 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 applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen, as set forth below.

Since the filing of the appeal, the applicant has been ordered removed from the United States twice as a result of his attempts to gain admission to the United States through fraud or material misrepresentation. The record illustrates that the applicant was apprehended on February 5, 2010 when he presented fraudulent documentation at the port-of-entry. The applicant was expeditiously removed pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The record illustrates that the applicant again attempted to enter the United States through the presentation of fraudulent documentation on February 11, 2010 and was again expeditiously removed under section 235(b)(1) of the Act that same day. As a result of the applicant's two expedited removal orders, he is inadmissible to the United States for twenty years pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i). An individual inadmissible under that section of law may apply for Permission to Reapply for Admission after Deportation or Removal, Form I-212, during the twenty year period. The applicant has not filed a Form I-212.

As a result of the applicant's attempted use of fraud or material misrepresentation in order to gain admission to the United States, the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act states that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative in this case is his U.S. citizen spouse. The AAO notes that only hardship to the applicant's spouse can be taken into account in the determination of extreme hardship. Although the applicant has a U.S. citizen child, Congress did not include children as qualifying relatives for waivers pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act. Hardship to the applicant or to the applicant's child will not be separately considered, except to the extent the hardship is shown to cause hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS will then assess 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 cumulative hardship to the applicant’s spouse as a result of the applicant’s inadmissibility amounts to extreme hardship. Counsel states that as a result of the separation from the applicant, the applicant’s spouse is suffering financial and emotional hardship. Counsel and the applicant’s spouse state that the applicant’s spouse has lost her home as a result of her inability to rely on the applicant’s income and that she has also had to file for bankruptcy. The record indicates that the applicant’s spouse filed for individual bankruptcy on May 8, 2009 in the United States Bankruptcy Court for the Central District of California and discharge was ordered by the court on November 10, 2009. The record makes clear that the applicant’s spouse lost one property, on [REDACTED] in the bankruptcy. The record also indicates that the applicant has reported a different address in [REDACTED] where she was residing at the time of the appeal and has appeared to reside since as early as 2007 as indicated on her 2007 W-2 forms. It appears from the record that the applicant’s spouse is living with her parents on La Verne Avenue. On Schedule J of her Bankruptcy filing, the applicant’s spouse indicates that her rent is \$250.00 per month. The record also indicates that the applicant’s monthly income is \$2,181 and that her expenses are \$2,030. It is clear from the record that the applicant’s spouse has suffered financial hardship that coincides with the applicant’s departure from the United States. The record does not establish, however, how the applicant contributed to the finances of the home prior to his departure.

Additionally, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In regards to the emotional hardship suffered by the applicant's spouse, the record indicates that the applicant's spouse has felt a great deal of stress from raising her child without his father, filing for bankruptcy, and moving back in with her parents. Counsel also states that the applicant's son is suffering from emotional hardship; however, as noted above, hardship to the applicant's child is only relevant to the extent it is shown to cause hardship to the applicant's qualifying relative. Here, the applicant's spouse states that her son's behavior problems are causing her stress. Additionally, counsel states that the applicant's son is undergoing counseling as a result of the applicant's absence and that this is resulting in financial hardship to the applicant's spouse. The record indicates that the applicant's son underwent developmental testing and that his performance "fell below the cutoff score for his age group and he may benefit from a more comprehensive evaluation." There is no indication in the record that the child underwent additional evaluation or of the expenses that his mother has incurred as a result of counseling for the child. The record also contains prescriptions for anxiety and anti-depressants for the applicant's spouse. 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. This documentation alone, however, without further explanation, ideally from the prescribing doctor or mental health professional, does not provide a clear picture of the emotional hardship suffered by the applicant's spouse. 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. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's spouse would suffer if she were to relocate to Mexico to reside with the applicant, counsel states that the applicant would suffer from financial and emotional hardship as a result of her loss of employment and her inability to care for her father in the United States who suffers from diabetes. The record also makes clear that the applicant's spouse has strong family ties in the United States, including her parents and her sister. The record confirms that the applicant's father is being treated for diabetes, but it does not indicate to what extent he relies on his daughter's care. Moreover, hardship to the applicant's spouse's father is only relevant under the statute to the extent that it is shown to cause hardship to the qualifying relative – the applicant's spouse. The applicant's spouse also indicates that her son suffers from asthma, which is confirmed in the record by a letter from [REDACTED]

[REDACTED] The record, however, does not indicate how the child's condition would be affected by relocation to Mexico or how his condition would cause hardship to the qualifying relative in this case. The applicant has submitted documentation of the high incidence of crime in Mexico and the AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. Although this information is noted, the applicant has not provided sufficient information on how the conditions in Mexico would affect his spouse.

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). As a result, based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case that would result from the applicant's spouse's relocation to Mexico 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. Again, in these proceedings, the burden of proof is on the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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 sections 212(i) and 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Based on the evidence of record considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. The AAO notes, however, that the applicant's recent attempts to enter the United States through the use of false documents would weigh heavily against his meriting a favorable exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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.