

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

[REDACTED]

H6

DATE: OCT 16 2012 OFFICE: PHOENIX 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, Phoenix, Arizona. The application 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 her behalf by her 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 her spouse.

In a decision dated April 1, 2011, the Field Office Director found that the applicant did not establish extreme hardship to a qualifying relative and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant's spouse will in fact suffer from extreme hardship as a result of her inadmissibility.

In support of the waiver application, the record includes, but is not limited to a legal brief from counsel for the applicant, an affidavit and statements from the applicant's spouse, statements from the applicant, statements from family and community members, biographical information for the applicant's son, school records for the applicant's son, medical records for the applicant's son, documentation relating to the applicant's spouse's employment, income and expenses, 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 is 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, in pertinent part, that:

(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 applicant states that she was admitted to the United States in August 2000 using her valid visitor visa/border crosser card with permission to remain in the United States not longer than six months. The applicant states that she remained in the United States until July 2009, when she departed the United States for a two week trip to Mexico. The applicant states that she was admitted to the United States again in July 2009 using her visitor visa/border crosser card. The applicant accrued one year or more of unlawful presence from February 2001 until July 2009, when she departed the United States. As the period of unlawful presence accrued is one year or more, 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 her 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. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant, her child or her stepchildren is not considered 212(a)(9)(B)(v) waiver proceedings unless it is shown to cause hardship to the 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 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 applicant's spouse would suffer emotional and financial hardship if he were to be separated from the applicant. In regards to financial hardship, the record reflects that the applicant's spouse is employed by [REDACTED] as a custodian earning \$17.60 per hour. The record also reflects that the applicant's spouse works part-time as a barber. The applicant's spouse states that if he were separated from the applicant, he would be left

to support three households – himself, his adult children from his previous marriage, and his wife and child in Mexico. The applicant's spouse, however, has not submitted any documentation to illustrate what financial support he provides to his children from his previous marriage or what he would expect his costs to be to support the applicant and his child in Mexico. 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).

The applicant's spouse also states that he will suffer emotional hardship being separated from his spouse, particularly because he has already gone through one divorce and separation. Counsel also states that the applicant's spouse has "suffered from depression, trouble sleeping, and loss of appetite." Counsel also states that the applicant's spouse "had a previous surgery for a hernia." As a result, counsel states that separation from the applicant would cause the applicant's spouse "another psychological trauma and extreme psychological suffering." In support of that statement, the record contains a statement from the applicant's spouse and a copy of the applicant's spouse's medical record prepared by [REDACTED] on April 14, 2011, which states "appear stressed and depress, no acute distress or pain" and "negative for depression, anxiety, insomnia and SI/HI." There is no support in the record for the applicant's spouse's and counsel's statements regarding the applicant's spouse's psychological condition. 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 spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The AAO notes that hardship to the applicant or to her child is only relevant to the extent that it is shown to cause hardship to the qualifying relative. Here, counsel states that the applicant's spouse's "psychological condition would greatly worsen knowing that his son was not receiving the special care and assistance he needs in order to overcome his speech difficulty." The applicant's spouse states that he could not care for his son without the applicant, so the child would relocate to Mexico with his mother. Counsel for the applicant also states that the applicant's spouse could not afford to "pay for such special care" for his son in Mexico. The record indicates that the applicant's son has asthma and allergies that are presently under control. The record also indicates that the applicant's son a speech or language impairment, which appears to be related to

his communication skills in English. The record, however, does not indicate that the applicant's son would require speech therapy in Mexico. Additionally, the record does not indicate that health care for his asthma and allergies would not be available to the applicant's son in Mexico, the applicant's spouse's inability to afford those services, or of the applicant's spouse's inability to care for his son in his mother's absence. Again, 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. at 165. 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 extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel for the applicant states that the applicant's spouse would not be able to relocate to Mexico because he is required to provide child support to his children from his previous marriage and could not obtain employment in Mexico to provide that support, as well as support the applicant and their child. The record does not support this statement. The record indicates that the applicant's children from his previous marriage are now 22 years old and 19 years old. The divorce decree and child support agreement in the record is dated August 27, 1997. Another document in the record, dated January 2009 indicates that the applicant's spouse was ordered by the Arizona Department of Economic Security Division of Child Support Enforcement to pay \$469.96 in child support. The record does not illustrate that the applicant's spouse has current child support obligations that he would not be able to fulfill if he were to relocate to Mexico. Counsel for the applicant also suggests that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico as a result of his family ties in the United States, his involvement in his community, and his psychological condition. There is no evidence in the record, however, to indicate that relocation to Mexico would result in emotional or financial hardship to the applicant's spouse. The applicant's spouse has not demonstrated that he would be unable to obtain employment and support his family in Mexico. The applicant's spouse is a native of Mexico and speaks Spanish. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's qualifying relative would specifically be affected by any adverse conditions there. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, as a result of the applicant's spouse 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.

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

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

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 qualifying relative 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 she 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.