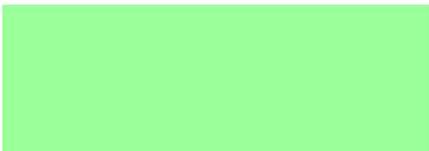




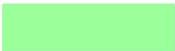
U.S. Citizenship
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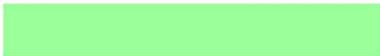
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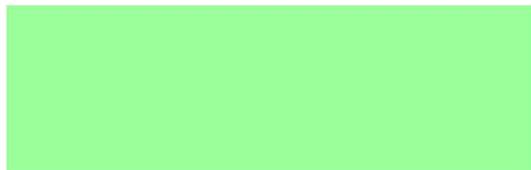
Office: NAIROBI

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Officer Director, Nairobi, Kenya denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Ethiopia, is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 applying for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. lawful permanent resident mother. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his mother. The applicant was ordered removed from the United States and is also inadmissible under section 212(a)(9)(A)(ii) of the Act. In regards to that ground of inadmissibility, the applicant concurrently filed an Application for Permission to Reapply for Admission (Form I-212), which was denied by the Field Office Director, but that decision was not appealed by the applicant.

In a decision dated November 23, 2011, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and denied the waiver accordingly. The applicant timely appealed that decision, but the appeal was not received by the AAO until March 11, 2013.

On appeal, counsel for the applicant states that the applicant established extreme hardship to his U.S. lawful permanent resident mother as a result of his inadmissibility and that the Field Office Director's decision was "incorrect and inconsistent with established case law."

In support of the waiver application, the record includes, but is not limited to: a legal memorandum by counsel for the applicant; biographical information for the applicant and his mother; a statement from the applicant; medical records pertaining to the applicant's mother; information on the applicant's mother's travel to Ethiopia and costs for travel; country conditions information concerning Ethiopia; documentation of family ties in the United States; documentation of the applicant's financial investments in the United States; documentation regarding the applicant's moral character; 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:

(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 was admitted to the United States on July 1, 1991 as a nonimmigrant F-1 student. He was placed into deportation proceedings for violating his F-1 status and ultimately on October 18, 1993, he was granted voluntary departure with an alternate order of deportation to Ethiopia. The applicant appealed that decision to the Board of Immigration Appeals. His appeal was dismissed on March 8, 2000 and voluntary departure was reinstated. The applicant filed a petition for review with the U.S. Court of Appeals for the Fourth Circuit and that appeal was dismissed on January 12, 2003, with the mandate issued on July 22, 2003. The applicant subsequently failed to depart the United States, remaining until his apprehension and removal on February 8, 2010. During the applicant's time in the United States, he accrued one year or more of unlawful presence in the United States and as a result is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this ground of inadmissibility on appeal.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 record establishes that the applicant's only qualifying relative is his U.S. lawful permanent resident mother. Hardship to the applicant will not be separately considered, except as it may affect hardship to the applicant's mother. 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 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.

We will first consider the hardship claimed to the applicant's U.S. lawful permanent resident mother were she to remain in the United States and be separated from the applicant. The applicant's mother is a 75-year-old U.S. lawful permanent resident and citizen of Ethiopia. The record indicates that at the time of the appeal, the applicant's mother resided permanently in Maryland with her daughter and grandchildren. The record also indicates that another daughter resided in the same building, and her son resided in the same city in Maryland. In her statement, the applicant's mother stated that she has not been able to rely on her other children for support because they have their own families and that she has relied principally on the applicant for support. There is no documentation in the record to illustrate that the applicant's mother's other children are unable to financially provide for her and physically assist her. Although the applicant's mother'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).

In supplementary materials, counsel indicated that the applicant's mother was "forced" to travel Ethiopia to reside with the applicant, but the record does not state the basis for that conclusion. In counsel's memorandum, she stated that the record shows that the applicant's mother "only had access to medicine when her son helped her get access to it." In support of that statement, counsel submitted a letter dated December 14, 2011 from [REDACTED] in Aberdeen, MD stating that he had not seen the applicant's mother since May 3, 2011 since she left for Ethiopia and that he cannot prescribe her medications when she has not been seen in his office. This letter does not support counsel's assertion that the applicant's mother was unable to obtain medical care in Maryland after the applicant's February 8, 2010 removal. Additionally, the record indicates that the applicant's mother obtained medical care from [REDACTED] in Bel Air, Maryland on March 16, 2011. Moreover, the record indicates that the applicant's mother has since returned to the United States in October 2012 and that after her return the applicant's mother obtained medications in Maryland. The applicant's mother appears to have access to medical care and medication in the United States without the presence of the applicant. Neither the applicant, the applicant's mother, nor counsel state who is providing assistance to the applicant's mother in the United States, but the record does indicate that she has numerous children and grandchildren residing in Maryland. Counsel also emphasized the applicant's mother's "deteriorating health" and her financial status, as being linked to the applicant's inadmissibility.¹ The record, however,

¹ Counsel refers to multiple unpublished, non-precedent decisions as a basis for her argument that the applicant's mother is experiencing extreme hardship; however, non-precedent AAO decisions apply existing law and policy to a unique factual record in an individual case. The decision is binding on the

does not support those conclusions and does not support that the applicant's mother is unable to obtain health care and meet her basic needs in the absence of the applicant. Again, the AAO notes the applicant's mother multiple children and grandchildren residing in Maryland, where the applicant's mother resides, and that the record has provided no documentation to support the conclusion that those individuals are unable to provide for the applicant's mother, such as documentation of those individuals' income, expenses, and work and family obligations. The AAO notes the age of the applicant's mother, her lack of ability to speak English, and her medical conditions; however, the hardships documented in the record, even when considered in the aggregate, do not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. lawful permanent resident mother would suffer extreme hardship should he relocate to her native Ethiopia to reside with the applicant. In materials supplementary to the appeal, counsel for the applicant states that the applicant's mother was forced to relocate to Ethiopia to reside with the applicant after his departure. As noted above, no documentation was submitted to support the assertion that the applicant's mother moved to Ethiopia out of force or that she was not having her basic needs met in the United States prior to her departure. Counsel also claims that travel to Ethiopia "brought on" stress to the applicant's mother that affected her health. Again, no documentation was submitted to support that assertion. As stated above, 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. Counsel further stated that the applicant's mother did not have access to medical care in Ethiopia and that access to medicine there "is prohibitively expensive." Numerous articles on health care and conditions in Ethiopia were submitted to support that statement; however, no documentation was submitted to show that the applicant's mother did not have access to and/or was not able to afford medications while she resided with the applicant there in 2012. In fact, a "medical certificate" from [REDACTED] in Addis Ababa, Ethiopia dated "8/12" indicates that the applicant's mother received care for an enlarged ovary while present in Ethiopia and that she was advised to receive follow-up care every three months. Documentation filed by counsel for the applicant later in 2012 indicates that the applicant's mother returned to the United States on October 13, 2012, but the record does not establish that lack of medical care or other hardship in Ethiopia was the reason for the applicant's mother's return to the United States. The evidence, considered in the aggregate, does not establish that the applicant's mother would suffer extreme hardship were she to relocate abroad to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. lawful permanent resident mother will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's mother will suffer some hardship, the record does not establish that the hardship rises to the level of "extreme" as contemplated by statute and case law. Having

parties to the case but does not create or modify agency guidance or practice. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. USCIS Policy Memo, *Precedent and Non-Precedent Decisions of the Administrative Appeals Office (AAO)*, PM-602-0086 (July 2, 2013).

found the applicant statutorily ineligible for relief under section 212(a)(9)(B)(v) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.