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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 25 2013 OFFICE: PHOENIX FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (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 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,

Ron Rosenberg, Acting 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 Dominica 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 his last departure from the United States. 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) to reside in the United States with hisU.S. citizen spouse. The AAO notes that the applicant is subject to a final order of removal issued by the Immigration Judge on February 23, 2010 and affirmed by the Board of Immigration Appeals (BIA) on September 8, 2011.

In a decision dated June 13, 2012, the Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute 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 the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to a letter from counsel, a letter from the applicant's spouse, documentation regarding the applicant's spouse's emotional health, biographical information for the applicant and her spouse, limited financial records for the applicant and her spouse, documentation regarding the applicant's spouse's educational pursuits, letters from family members of the applicant and his spouse, country conditions information concerning the Dominican Republic, and documentation of the applicant's immigration and criminal 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 record indicates that the applicant previously was admitted to the United States on August 8, 2000 using his Dominica passport and a U.S. visitor visa. The applicant was authorized to remain in the United States as a visitor for a period of six months, however, he remained in the United States until May 1, 2004. The applicant then attempted to reenter the United States on October 8, 2005 using his expired visitor visa. At that time it was determined that the applicant previously overstayed his visa and the applicant was processed for expedited removal. The applicant expressed a fear of returning to his native Dominica, was provided a credible fear interview, and was paroled into the United States for asylum proceedings before the Immigration Judge. The applicant was not found credible by the Immigration Judge, his application for asylum was denied, and he was ordered removed. The decision was affirmed by the BIA, and a subsequent motion to reopen filed before the BIA was dismissed. The applicant, an arriving alien, filed an application for adjustment of status with the U.S. Citizenship and Immigration Services along with the underlying application for a waiver of inadmissibility (Form I-601) in regards to his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

The AAO notes that the record indicates that the applicant may also be inadmissible under section 212(a)(6)(C) of the Act for having sought admission to the United States as a nonimmigrant with immigrant intent.

Section 212(a)(6)(C) of the Act, which provides, in pertinent part, that:

> (i)...Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides a waiver for section 212(a)(6)(C). That section 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.

The record indicates that the applicant sought admission to the United States on October 8, 2005 with an expired visitor visa. In a sworn statement before immigration officials on October 8, 2005, the applicant stated that he wished to enter to the United States to work and that he desired to live in the United States for the rest of his life. As a result, the record indicates that the applicant sought admission to the United States by willfully misrepresenting a material fact, namely that he would be a temporary visitor to the United States when in fact he intended to work and remain in the United States permanently, and is subject to section 212(a)(6)(C) of the Act. The applicant has not been previously advised that he may be subject to this ground of inadmissibility and this issue was not addressed on appeal by counsel. As the applicant is separately inadmissible under section 212(a)(9)(B)(i)(II) of the Act, the AAO does not need to make a determination in regards to the applicant's inadmissibility under section 212(a)(6)(C) of the Act at this time.

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. In this case, the applicant's qualifying relative is her U.S. citizen spouse. Hardship to the applicant is only relevant under section 212(a)(9)(B)(v) of the Act to the extent that the hardship is shown to cause hardship to the qualifying relative. If extreme hardship to the applicant's 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-Moralez,* 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.

On appeal, counsel for the applicant states the applicant's spouse will experience extreme hardship both if she is separated from the applicant and if she were to relocate to Dominica. In regards to the hardship that the applicant's U.S. citizen spouse would suffer if she were to be separated from the applicant, counsel states that the applicant's spouse suffers from mental health problems and that the "applicant has helped his USC spouse cope with her mental problems, encouraged her to improve herself, and has been a stabilizing force in her life." As a result, counsel states that "[a] prolonged or short separation of the applicant from his USC spouse will have a high risk of exacerbating her chronic Major Depressive Disorder." In support of that statement, the record contains a report from , dated April 12, 2012. Dr. states that the applicant's spouse reported having a history of depression since age 5 or 6. The AAO notes that although the applicant's spouse reports having previously sought psychological and medical care for her anxiety and depression, there is no documentation of that

care in the record. The applicant's spouse also reported a previous suicide attempt for which she was hospitalized, but there is no documentation in the record of that hospitalization. Although the applicant's spouse'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).

A second letter in the record, dated June 18, 2012, from [redacted], states that the applicant's spouse "has many emotional health problems" and that the applicant has been able to help keep his spouse grounded and "overcome her suicidal thoughts and cope with the loss of her children." The one paragraphs letter from [redacted] does not state his relationship to the applicant's spouse, the extent of his evaluation of her, or any diagnosis or treatment for the applicant's spouse. Nonetheless, he states that "it is imperative that [the applicant] remain in the United States" to assist his spouse. The AAO notes that there is no evidence in the record of the applicant's four children from her previous marriage and any custody or financial obligations that the applicant's spouse has in regards to those children. Additionally, the AAO notes that neither medical professional diagnosed the applicant's spouse with Major Depressive Disorder, as stated by applicant's counsel. The record does establish that the applicant's spouse suffers from a mood disorder, as diagnosed by [redacted] however, there is very little if no corroborating evidence in regards to the effect of that mood disorder on the applicant's spouse and the applicant's role in assisting his spouse. The AAO also notes that none of the letters in the record from the families of the applicant and his spouse address these important issues.

In regards to economic hardship, the record indicates that the applicant's spouse was scheduled to graduate from massage therapy school on February 13, 2013. There is no documentation in the record to indicate that the applicant's spouse would suffer financial hardship if separated from the applicant. 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 relies principally on the hardship that the applicant's spouse would suffer if she were to relocate to Dominica to reside with the applicant. In particular, counsel states that the applicant's spouse relies on her medical insurance and medical care in the United States due to her mental health and medical history. The AAO notes that 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 establishes that the applicant's spouse suffers from a mood disorder, however, there is

insufficient evidence to establish that the applicant's spouse is receiving ongoing care for that disorder in the United States or would require and be unable to obtain care for her disorder in Dominica. The AAO notes that the country conditions information submitted for Dominica, pertain to the Dominican Republic, not the country of Dominica. Counsel also notes that the applicant's spouse was born in the United States, has resided here her entire life, and has strong family ties here. The AAO notes that applicant's spouse's family ties, however, no evidence has been provided to document the applicant's spouse's interaction with her family in the United States and the extent of those ties. As such, we cannot determine the degree of hardship that she would suffer if she were to be separated from those family members. Also, as noted above, no documentation was provided in regards to the applicant's spouse's four children from her previous marriage and her obligations in regards to those children. 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 also notes the applicant's spouse's recent education in massage therapy. There is no documentation in the record, however, to indicate that the applicant's spouse would be unable to obtain employment in that profession in Dominica. Moreover, as stated above, the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33*; *Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19 I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Dominica, 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 he 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.