



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 09 2013** Office: LIMA, PERU

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:

SELF-REPRESENTED

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 in accordance with the instructions on 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil 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 more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, the applicant's spouse states that she is suffering emotionally and financially as a result of the applicant's inadmissibility. She also states that she cannot relocate to Brazil because she has a daughter from a previous relationship and the father of her daughter would not allow her to take the child to Brazil. She submits additional documentation of her hardship.

The record of hardship includes: a statement from the applicant's spouse, a statement from the applicant's mother-in-law, numerous statements from friends and family, documentation regarding child support for the applicant's spouse's child, financial documentation, and medical documentation.

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.

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

...

(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.

In the present case, the record reflects that the applicant entered the United States without inspection on May 22, 2005. On August 8, 2007, the applicant was convicted of driving under the influence of alcohol or drugs. The applicant was placed into a diversion program, which was completed on August 8, 2008. On February 15, 2010, the applicant was convicted of disorderly conduct under Kansas Statutes Annotated (K.S.A.) 21-4101, a class C misdemeanor and sentenced to 30 days in prison, with six months unsupervised probation.¹ As a result of these convictions, the applicant was placed in removal proceedings and granted voluntary departure on December 22, 2010. The applicant departed the United States in compliance with his voluntary departure on April 9, 2011. Thus, the applicant was unlawfully present in the United States from May 22, 2005 to December 22, 2010. The applicant is inadmissible under section 212(a)(9)(B)(i) of the Act. The applicant's qualifying relative is his U.S. citizen spouse.

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 qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. 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-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

¹ We note that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. A conviction for a simple driving under the influence offense is not considered a crime involving moral turpitude. *In Re Lopez-Meza*, *Id.* 3423 (BIA Dec. 21, 1999). *See also, Matter of Torres-Varela*, 23 I. & N. Dec. 78 (BIA 2001). Furthermore, a conviction under K.S.A. 21-4101 for disorderly conduct, a Class C misdemeanor, holds a maximum allowable sentence of one month and the applicant was only sentenced to one month in prison. Thus, the applicant's conviction for disorderly conduct, if found to be a crime involving moral turpitude, would qualify for the petty offense exception.

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 applicant's spouse is claiming financial and emotional hardship as a result of separation. The applicant's spouse states that she is suffering financially without the applicant because she is not

able to earn enough money to support herself. She states that the biological father of her daughter does not pay child support and that the applicant is like a father to her daughter. The applicant's mother-in-law states that her daughter and granddaughter are currently living with her and that she helps to support them. She states that the applicant's spouse has a learning disability affecting her memory functions and because of this disability is not able to obtain more vocational skills to earn more pay. The applicant's mother-in-law states that the applicant's spouse currently works at a dog groomer where she makes \$9.00.

The record indicates that when the applicant was in the United States, he earned approximately 80% of the household income, which totaled approximately \$24,000 per year. In 2011, the applicant's spouse earned only \$4,500. The record also indicates that the applicant's spouse is not receiving child support from the biological father of her daughter, as paperwork in the record seems to indicate that she has started the process to attempt to enforce child support payments from him.

We find that the current record does indicate that the applicant's spouse's financial situation has changed since the departure of the applicant. The record fails to show that she would not be able to earn more income or that her mother would no longer be able to help her financially. The record does not include documentation establishing that the applicant's spouse has a learning disability that precludes her from advancing her education or career nor does it include documentation regarding the financial situation of the applicant's spouse's mother. Moreover, the record does not indicate that the emotional hardship being suffered by the applicant's spouse rises to the level of extreme hardship and would be beyond what would normally be expected when a husband and wife are separated.

In regards to relocation, the applicant's spouse claims she would suffer emotional and financial hardship. She states that she would suffer emotionally from being separated from her mother and her daughter. She states that her daughter's biological father would not allow her to relocate with her daughter to Brazil. She states further that she would feel isolated on her spouse's family farm in Brazil and would not be able to find employment, because she would not be able to learn the language due to her learning disability.

We find that the record does not support the applicant's spouse's assertions. The applicant's spouse has not submitted documentation to show that she has a learning disability or that she would not be able to find employment in Brazil. Furthermore, the record does not indicate that the biological father of the applicant's spouse's daughter is present in the daughter's life and would oppose any relocation. We acknowledge that relocating and separating from her mother would be difficult for the applicant's spouse, but the record does not indicate that the hardships suffered upon relocation would rise to the level of extreme hardship.

We note that the record includes copies of prescriptions for the applicant's spouse used to treat Type 2 Diabetes and Hypothyroidism, but nothing in the record shows a connection between these medical issues and hardship resulting from the applicant's inadmissibility.

The assertions of the applicant's spouse 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)).

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 spouse 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.