



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 10 2013**

OFFICE: BOSTON

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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Boston, Massachusetts. An appeal of the denial was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native of Brazil and a citizen of Brazil and Italy. She 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 her last 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 husband and seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

On December 12, 2011, the Field Office Director denied the applicant's Form I-601 stating that the applicant failed to demonstrate that her qualifying relative would suffer extreme hardship as a result of her inadmissibility. On appeal, counsel for the applicant indicated that a brief and/or evidence would be submitted to the AAO within 30 days of the filing of the appeal. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to the AAO. The record did not contain evidence that counsel had submitted an appeal or brief, and on January 8, 2013, the AAO summarily dismissed the applicant's appeal on that basis.

On motion, counsel states that he did in fact submit a brief and additional evidence on behalf of the applicant and that the evidence establishes that the applicant's U.S. citizen spouse would suffer extreme hardship as result of the applicant's inadmissibility.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO will accept counsel's brief and additional evidence submitted on behalf of the applicant on motion.

In support of the waiver application, the record includes, but is not limited to a brief from counsel, a statement from the applicant's spouse, a statement from the applicant, a letter from the applicant's spouse's mother, letters from friends of the applicant, a psychological assessment of the applicant, limited financial information for the applicant and her spouse, biographical information for the applicant and her spouse, and documentation concerning 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 record indicates that the applicant was previously present in the United States beyond her period of admission, resulting in the accrual of one year or more of unlawful presence. The applicant was admitted as a B-2 visitor to the United States using her Italian passport on May 22, 2000 with authorization to remain in the United States for a time period not to exceed six months. The record indicates that the applicant remained in the United States until October 21, 2003, accruing one year or more of unlawful presence, and, as a result, is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of ten years from her last departure from the United States. The applicant did not remain outside of the United States for ten years, but rather was admitted to the United States using her Brazilian passport on July 3, 2007. The applicant does not contest her 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. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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 (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 U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In regards to the hardship that the applicant's spouse will suffer as a result of separation from the applicant, counsel states that the impact on the applicant's spouse's mental and financial health, as well as his future well-being, amounts to extreme hardship. In particular, counsel states that the applicant's spouse suffered from depression prior to his marriage, which was significantly mitigated by the applicant's love and support.

The record contains a psychological evaluation of the applicant's spouse, undated, but prepared at the suggestion of counsel in support of these proceedings. The evaluation was conducted by [REDACTED] MS, in [REDACTED] Mr. [REDACTED] states that the applicant's spouse "presents as a healthy, engaged, intelligent person facing significant life disruption" and that the applicant's spouse reported to him that he has a history of "sporadic, moderate depression and treatment with psychiatric medication (Celexa, 2009). He concludes that the applicant's spouse "is at risk for server depressive symptoms and continued emotional dysregulation if psychopharmacologic or psychotherapeutic intervention is not engaged."

No medical records were provided to document the applicant's spouse's prior conditions, treatment, or prescriptions, although counsel states that the applicant's spouse was treated with counseling, as well as medication. Moreover, no documentation was submitted on motion to indicate the applicant's spouse had sought treatment as suggested by Mr. [REDACTED]. A letter in the record from the applicant's spouse's mother states that the applicant's spouse has "gone through bouts of sadness/depression, drug/alcohol abuse" and episodes of chronic asthma.

Additionally, the applicant, her spouse, and their friends indicate in their statements in the record that the applicant's spouse's mental health has affected the applicant's spouse's well-being. In particular, the statements mention that the applicant's spouse has sought counseling. However, as stated above, the record does not contain any documentation of that counseling. Although the applicant and her 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). Nonetheless, the AAO will take the stated emotional hardships, as documented in the record, into

account along with the other hardships asserted when assessing whether the applicant has established that her spouse would suffer extreme hardship as a result of their separation.

In regards to financial hardship, counsel states that the applicant has been unable to find steady work as a musician and has relied on the applicant's income as a hairdresser. Both the applicant and the applicant's spouse, in their statements, also state that the applicant is the present financial provider for the couple. The record, however, contains no documentation of the applicant's income or the couple's expenses. Additionally, the applicant's spouse's U.S. federal income tax returns from 2008 to 2010 indicate that he was employed full-time as a crew member at Trader Joe's earning \$15.50 per hour. Although the couple's financial situation may have changed, there is no documentation in the record to support those claimed changes. Additionally, the record does not contain tax returns for 2011. Based on the limited documentation in the record it is not possible to determine the degree of financial hardship that the applicant's spouse would suffer in the applicant's absence. The AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure some emotional hardship as a result of long-term separation from the applicant, but the record does not establish that the hardships he would face as a result of separation from the applicant, considered in the aggregate, rise to the level of "extreme."

On motion, counsel for the applicant also states that the applicant's spouse would suffer extreme hardship if he were to relocate to Brazil to reside with the applicant. Counsel states that the applicant's spouse does not speak Portuguese and he does not believe that he would be able to find work in Brazil. The applicant's spouse states that he is a musician and "is experienced only in American musical styles;" however, there is no documentation in the record to support the claim that the applicant's spouse is a musician or that as a musician experienced in American musical styles that he would be unable to obtain employment in Brazil or Italy, the applicant's other country of citizenship. As stated above, going on the 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 applicant also states that she does not believe that she would be able to find work in Brazil to support her and her spouse because her certification in hairdressing is only valid in the United States. The AAO notes that the record does not contain any documentation of the applicant's certification or the fact that she would not be able to practice her profession in Brazil. Moreover, the applicant is also a citizen of Italy and neither counsel nor the applicant have addressed whether the applicant's spouse would suffer extreme hardship if he were to relocate to that country with the applicant. No country conditions information was submitted in the record on either country. The AAO notes that the applicant's spouse is a native of the United States, does not speak Portuguese, and has family ties to the United States and as a result would suffer some hardship if he were to relocate abroad. The documentation in the record; however, does not indicate that the hardship that he would experience would be distinct from that common hardships. 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 Brazil or Italy, 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.

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 as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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. After a careful review of the record, the AAO finds that in the present motion, the applicant has not met this burden. Accordingly, the motion is granted and the underlying appeal is dismissed.

ORDER: The waiver application remains denied.