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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 21 2014**

OFFICE: NEWARK FIELD OFFICE

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under 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:

INSTRUCTIONS:

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Costa Rica 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 ten years of his last departure from the United States. The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated July 16, 2013.

On appeal counsel contends that if a waiver is not granted, the applicant's U.S. citizen spouse will suffer extreme hardship. *See Notice of Motion or Appeal (Form I-290B)*. The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; a hardship affidavit from the applicant's spouse; an affidavit from the applicant; clergy letters; psychological evaluations; medical and prescription records and documents; an automobile accident investigation report; employment, tax and financial documents; copies of child support checks; family photos; marriage, divorce and birth certificates; and documents related to the applicant's U.S. entries, exits, and visa applications. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record shows that the applicant entered the United States on January 14, 1999 as a temporary B-2 visitor, authorized to remain until July 13, 1999. He overstayed his authorized period and then departed the United States on December 14, 2004. The applicant was subsequently admitted to the United States on a number of occasions, to wit: as an H-2B nonimmigrant in March 2005,

March 2006, March 2007, and February 2008, and as an H-2A nonimmigrant in February 2009. The applicant was again admitted as an H-2B nonimmigrant on March 2, 2011, and most recently on April 19, 2012. The applicant accrued unlawful presence from July 14, 1999 to December 14, 2004, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and we concur that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.¹

A waiver of inadmissibility under section 212(9)(a)(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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only 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 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

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Our *de novo* review of the record has been inconclusive in determining how, after being rendered inadmissible for ten years by his unlawful presence from July 1999 to December 2004, seven nonimmigrant visa applications were approved for the applicant between 2005 and 2012. On at least one such application, approved in 2012, it was indicated by checking a box that the applicant has never been unlawfully present, overstayed the amount of time granted by an immigration official or otherwise violated the terms of his U.S. visa.

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*, 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.

The applicant’s spouse is a 49-year-old native of Costa Rica and citizen of the United States concerning whom hardship has been asserted of an economic, emotional/psychological, and medical nature. She writes that the hardships she would face living without the applicant would be indescribable as she depends on him very much and would be lost without him. The applicant contends that his spouse depends on him emotionally and financially, and she could not afford alone the financial obligations she undertook when purchasing their house. He adds that they have also incurred some debt for home repairs. The field office director’s decision notes that income tax documents show that the applicant’s spouse earns more than \$75,000 annually, while the applicant earns about \$36,000. On appeal, counsel asserts that the fact the applicant’s spouse earns a decent living does not mean she does not rely on the applicant’s financial contributions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1

(BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In these proceedings, the burden of proof lies solely on the applicant to establish eligibility. Section 291 of the Act, 8 U.S.C. § 1361. Thus despite counsel's assertion, the evidence in the record does not establish that the applicant's spouse would experience significant economic hardship or be unable to meet her financial obligations in the applicant's absence. Assertions of economic hardship have however, been considered in the aggregate along with all other factors asserted.

The applicant avers that his daughter, [REDACTED] depends on him financially and emotionally. Counsel asserts that the applicant's ties to his daughter were belittled in the field office director's decision because she lives with her mother. This assertion is not supported by the record, as the decision merely state that [REDACTED]'s biological mother, [REDACTED] is her custodial parent. Counsel further contends that the child's suffering, if separated from the applicant, is a factor to be considered. Congress has not extended qualifying relative status to the children of applicants for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant's daughter is not a qualifying relative for waiver purposes, hardship to her can be considered only insofar as it results in hardship to the applicant's spouse. As noted, the record shows that [REDACTED] resides with her mother. Cancelled check copies show that the applicant and his spouse have made regular payments of \$125.00 for [REDACTED]'s support. And while the applicant's spouse speaks fondly of [REDACTED] it has neither been articulated nor established by the record that hardship to the applicant's daughter would result in hardship to the applicant's spouse.

Counsel asserts on appeal that medical evidence in the record was ignored and that the field office director's decision failed to give it even cursory recognition. An investigation report and medical records show that the applicant's spouse was injured in an automobile accident in December 2012, underwent an MRI of her neck to rule out herniated disc, was diagnosed with radiating neck pain, and underwent physical therapy between December 19, 2012 and February 7, 2013. However, neither counsel nor the applicant and his spouse have addressed any impact that separation would have on the applicant's spouse's condition. Although this deficiency was identified in the field office director's decision, it has not been addressed on appeal.

In her initial evaluation, [REDACTED] Ed.D., stated that the applicant's spouse was experiencing extreme psychological distress as a result of potential separation from the applicant. She diagnosed the applicant's spouse with major depressive disorder, listed a number of related symptoms, and stated that these were a direct result of the anticipated loss of the applicant. Dr. [REDACTED] wrote that because the applicant's symptoms were so severe, she was in need of antidepressant medication for which she was being referred to her primary care provider. Dr. [REDACTED] also referred the applicant's spouse for psychotherapy and noted that if left untreated, her condition and the stress of losing the applicant could make her a suicide risk. In a new psychological evaluation submitted on appeal, Dr. [REDACTED] avers that the applicant's spouse is suffering severe depression directly as a result of the denial of the applicant's waiver application. She writes that the applicant's spouse's symptoms have become more severe and she is now on both antidepressant medication and sleep medication. She explains that the end result of extreme depression can be suicide, though there is no indication from the evaluation the applicant's spouse has expressed suicidal ideation. Dr. [REDACTED] posits that the severe depression the applicant's spouse is experiencing prevents her from functioning in her life. No examples have been

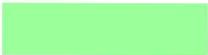
articulated or evidence submitted demonstrating the areas in which the applicant's spouse is no longer able to function. There has been no evidence provided showing that her employment as a household manager has been affected, or demonstrating that with treatment the applicant's spouse will be unable to manage her symptoms. Though the applicant's spouse was referred by Dr. [REDACTED] for psychotherapy, evidence that she is receiving such treatment and the effects thereof has not been submitted. Nevertheless, we have considered both letters by Dr. [REDACTED] in the aggregate along with all other hardship factors and assertions.

We acknowledge that separation from the applicant, for the remainder of his temporary period of inadmissibility, may cause various difficulties for his spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse contends that relocating to Costa Rica would result in forsaking her relationships with family in the United States and her employment and career opportunities herein. She posits that it would be unlikely that she would have health insurance in Costa Rica to cover any health expenses, anxiety, future pregnancies or other illnesses that might occur. The field office director's decision explains that assertions of speculative or possible hardships that may be faced upon relocation can be afforded very little evidentiary weight. Despite the identification of this deficiency, it has not been addressed or cured on appeal. Rather, counsel speculates that the applicant's spouse would find herself jobless in Costa Rica and that if injuries from her 2012 automobile accident were to give rise to serious problems later in life she would be left without resources. The record contains no country reports or other documentary evidence addressing employment, healthcare, or any other conditions in Costa Rica. Counsel posits that the applicant's spouse's depression is likely to worsen upon relocation, a conclusion absent from Dr. [REDACTED] evaluations. Counsel adds that in Costa Rica, the applicant's spouse would lose both her family support network and the support of her church. It has not been demonstrated in the record that the applicant's spouse would be unable to secure employment or any health-related services she may require in Costa Rica. Nor has it been demonstrated that she would be unable to maintain meaningful relationships with family members or others in the United States during the remainder of the applicant's temporary period of inadmissibility.

We have considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including readjustment to a country in which she has not resided for a number of years; her lengthy residence in the United States; her close family ties to the United States – particularly to her adult son; her church and other community ties; her health conditions, health insurance and relationship with providers; her employment and property ownership in the United States; and asserted economic, employment, and health-related concerns about Costa Rica. Considered in the aggregate, we find the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Costa Rica to be with the applicant during the remainder of his temporary period of inadmissibility.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, we find that the applicant has failed to demonstrate extreme hardship to a qualifying



relative. 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.