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

U.S. Citizenship and Immigration Services

(b)(6)

Date: AUG 3 1 2015

FILE:
APPLICATION RECEIPT:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application. 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 Poland 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 again seeking admission within 10 years of his last departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated July 7, 2014.

On appeal the applicant asserts that the field office director's denial of his waiver application should be reversed because in their totality, material and emotional hardships to his spouse if the waiver is denied would result in extreme hardship. With the appeal the applicant submits a statement and medical information for the son of the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

The record reflects that the applicant entered the United States on January 8, 2005, with a B-2 visitor visa and authorization to remain until July 7, 2005, but did not depart until March 10, 2007. There is no indication in the record that the applicant sought an extension or change of status. On Form I-601 the applicant states that he had entered the United States in 2005 at a time of personal trauma due to divorce and had nobody to return to in Poland. In a sworn statement dated June 4, 2014, the applicant stated that he had not applied for an extension or change of status because he was not aware that he could. Based on this information the field office director determined the applicant was inadmissible for having accrued unlawful presence of more than one year.

On appeal the applicant asserts that as he was twice issued visas after he had accrued unlawful presence he had a de facto waiver of unlawful presence and is therefore not inadmissible. The record reflects that after departing the United States on March 10, 2007, the applicant was issued a visitor visa with which he entered the United States on August 17, 2007, and again on March 5, 2008, after which he has not departed.

An alien who departs the United States after having been unlawfully present for a period of one year or more subsequent to April 1, 1997, is inadmissible for 10 years, except that an applicant for adjustment of status who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does not make a departure within the meaning of section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012). When the applicant departed the United States in March 2007 he did not have a pending application for adjustment of status or valid grant of advance parole. The applicant's subsequent lawful entries to the United States as a B-2 visitor do not cure the accrual of unlawful presence, and the applicant is admissible under section 212(a)(9)(B)(i)(II) of the Act.

The record also shows that on a visa application (Form DS-156), signed on August 6, 2007, the applicant indicated at question 29 that he had previously entered the United States on January 8, 2005, and remained for one month even though he had remained for over two years after entering on that date. The applicant also indicated "no" at question 38 as to whether he had ever violated terms of a U.S. visa or been unlawfully present in the United States even though he had previously violated his status by remaining beyond his period of authorized stay. Therefore we find the applicant also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation.

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

> (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.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C* , 9 I&N Dec 436

(BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

Here, by indicating that he had only remained in the United States for one month and that he had never violated his status or been unlawfully present in the United States, the applicant shut off a line of inquiry relevant to his eligibility for a B1/B2 nonimmigrant visa. Therefore we find the applicant also inadmissible for fraud or misrepresentation and must establish eligibility for a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides that:

> 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.

A waiver of inadmissibility under section 212(i) 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. The applicant's spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 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. *Salcido-Salcido v. INS*, 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 the applicant asserts that separation from him will cause his spouse to suffer emotional trauma and will result in emotional disturbance to her child, who only recently gained a father figure. He asserts that his spouse will experience stress from the uncertainly of the future of their newly-established family and an inability to cope with the effects on her personal and family life. The applicant states that his spouse was previously divorced, and if separated from each other, she and the applicant would effectively become divorced as well. The applicant states that relations between him and his spouse's son are like a father with a son who needs a role model for emotional and psychological stability.

The applicant failed to provide any detail and the record contains no supporting evidence concerning the emotional hardship he states his spouse would experience due to separation from him or how such emotional hardships are outside the ordinary consequences of removal. Nor does the record contain information concerning the relationship between the applicant and his spouse's son to support the assertion that separation from the applicant would create such hardship to the son that it would cause extreme hardship to the applicant's spouse. The assertions made by the applicant have been considered, but assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant has not asserted and financial documents submitted to the record do not show that his spouse would experience financial hardship due to separation from him. Documents submitted to the record include an income tax return and form W-2 for the spouse from 2013, bank statements from 2013 and 2014, and a housing lease. No documentation has been submitted establishing the spouse's current expenses, assets, and liabilities or her overall financial situation, or any financial contribution that the applicant makes, to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find that the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Poland to reside with the applicant. On appeal the applicant asserts that relocating to Poland would result in a lack of employment for his spouse and medical care for her son. He states that his spouse is a phlebotomist, and if she relocated to Poland she would be unlikely to get employment in her field since Poland requires different certifications for medical professionals.

The applicant also asserts that his spouse's son has been diagnosed with attention deficit hyperactivity disorder (ADHD) and receives proper medical care and educational services in the United States, but that it is unlikely he and his spouse can provide proper care, treatment, and education for him in Poland. The applicant further assets that his spouse's son speaks only rudimentary Polish, so he would be disadvantaged because of a lack of bilingual education programs in public schools.

Documentation submitted to the record includes a report from a developmental pediatrician, dated February 10, 2014, that chronicles the son's development and diagnoses him with attention deficit hyperactivity disorder. The report recommends the son receive classroom accommodation with a follow up teacher rating to see if accommodation is helping, and if there is no significant difference then consider a trial medication. The report also indicates that "his gait was notable for pes planus" and recommends evaluation for possible orthotics, but provides no further detail about this condition. The report does not indicate a condition so severe as to support a finding of extreme hardship to the applicant's spouse if she were to relocate with her son to reside with the applicant abroad.

The record contains no country information or other documentary evidence to support the applicant's assertions that his spouse would be unable to find employment in Poland or that her son would be unable to obtain adequate medical or educational services such that it would cause extreme hardship to the applicant's spouse. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Therefore the record fails to establish that economic, medical, and educational concerns would rise to the level of extreme hardship for the applicant's spouse if she were to relocate to Poland, her native country.

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. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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.