U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5129510

Date: JUNE 18, 2020

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and was found inadmissible for unlawful presence. He seeks a waiver of inadmissibility under the Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Nebraska Service Center denied the application, concluding that the Applicant did not establish extreme hardship to his mother, the only qualifying relative in this case, if he is denied admission. On appeal, the Applicant submits additional medical records for his mother and country conditions information for Honduras.

The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon our *de novo* review, as explained below, we will dismiss the appeal.

A foreign national who 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(II) of the Act. A foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act. There is a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse, parent, son, or daughter of the foreign national, or in the case of an applicant for a fiancé(e) visa, extreme hardship to the petitioning U.S. citizen fiancé(e). Section 212(a)(9)(B)(v) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural

readjustment were the "common result of deportation" and did not alone constitute extreme hardship). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

We affirm the Director's decision and incorporate it here. We note that the Director found the record insufficient in showing how the Applicant's mother's medical conditions, including diabetes, affect her ability to perform daily tasks, if at all, or the extent to which she may require the Applicant's assistance as a result. However, the Applicant does not sufficiently address these deficiencies on appeal. Significantly, the record continues to not include any statement or letter from the Applicant or his mother. The medical records submitted on appeal do not clarify the deficiencies noted by the Director and do not show any recent appointments.[1] Assertions of counsel do not constitute evidence and must be substantiated in the record with independent evidence, which may include affidavits and declarations, none of which are present here. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (unsupported statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988). The waiver application will remain denied.

ORDER: The appeal is dismissed.

[1] Although an "Immunization Summary" lists the Applicant mother's immunizations and allergies as of February 20, 2019 (the date the summary was printed), this document shows that her last immunization occurred in 2017. Her purported recent fall occurred four years ago and the medical records show that her daughter, and not the Applicant, was the person who regularly accompanied their mother to her appointments. In addition, notes from her October 2017 medical appointment indicate that the Applicant's mother was moving back to Honduras.