U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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DATE: OCT 17 2011 Office: SAN DIEGO, CA FILE: [redacted]

IN RE: Applicant: [redacted]

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Diego, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen and the mother of a Lawful Permanent Resident (LPR). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated March 26, 2009.

On appeal, the applicant's spouse asserts that denial of the applicant's waiver request would result in extreme hardship to him. *Form I-290B, Notice of Appeal or Motion, and attached statement,* dated April 22, 2009.[1]

The record includes, but is not limited to, statements from the applicant's spouse; a medical statement regarding the applicant's spouse; copies of W-2 Wage and Tax Statements, earning statements and tax returns; a copy of a lease agreement; copies of bank statements; copies of gas and electric bills; school records regarding the applicant's son; and country conditions information on Mexico. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

> (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.

In his denial of the applicant's Form I-601 application, the District Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, but did not indicate the basis of his finding. A review of the record, however, finds it to support the District Director's determination of the applicant's section 212(a)(6)(C) inadmissibility.

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[1] The requirements at 8 C.F.R. § 103.2(a)(3) specify that an applicant may be represented by an attorney in the United States as defined in 8 C.F.R. § 1.1(f), by an attorney outside the United States as defined in 8 C.F.R. § 292.1(a)(6) or by an accredited representative as defined in 8 C.F.R. § 292.1(a)(4). In this case, the record contains a Form G-28, Notice of Appearance as Attorney or Representative, filed by an individual who is not an attorney or an accredited representative, i.e., a person representing an organization accredited by the Board of Immigration Appeals. Accordingly, she may not serve as the applicant's representative. For purposes of this proceeding, the AAO will consider the applicant to be self-represented.

The record reflects that the applicant has resided in the United States with her spouse since March 2005 (as stated on the Form G-325A, Biographic Information) or August 2005 (as stated on the Form I-601) and that after temporarily departing the United States, she returned on March 21, 2008, using a Border Crossing Card, issued to her on November 8, 2001. As the applicant used a Border Crossing Card, a nonimmigrant entry document, to return to her permanent residence in the United States, the AAO finds that she entered the United States through fraud or the willful misrepresentation of a material fact. Accordingly, the AAO finds that she is barred from admission to the United States under section 212(a)(6)(C)(i) of the Act.

The AAO notes that the applicant may be inadmissible to the United States under section 212(a)(9)(B)(i) of the Act. In denying the Form I-485, the District Director found the applicant to have accrued unlawful presence in the United States from August 1999 through May 8, 2008. While the AAO agrees that the applicant accrued unlawful presence in the United States, we do not find the record to clearly indicate the length of the applicant's unlawful presence and, therefore, do not find it to establish the applicant's inadmissibility under section 212(a)(9)(B)(i) of the Act. We note, however, that the requirements for a waiver of unlawful presence are identical to those under section 212(i) of the Act. Therefore, if the applicant successfully meets the requirements for a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act, any section 212(a)(9)(B)(i) inadmissibility she may have will also be waived.

Section 212(i) of the Act provides that:

> (1) 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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (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. *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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The applicant's spouse asserts that relocation to Mexico will be a hardship for him. He contends that it will be mentally and emotionally difficult for him to live in Mexico because he has been residing in the United States since age 13, and is used to the American way of living. The applicant's spouse states that his immediate family (parents and siblings) reside in the United States, that he has no immediate family in Mexico, and that it will be a hardship for him to be separated from his family. The applicant's spouse also states that relocating to Mexico will mean that he will have very little contact with his family in the United States, because of the violence caused by drug cartels, as they are afraid of traveling to Mexico. The applicant's spouse asserts that if he relocates to Mexico, he will be concerned about his health and overall well-being as well as that of his family due to the inadequate healthcare system, the inferior educational opportunities available to his son and the lack of clean drinking water. The applicant's spouse states that since his medical insurance will not cover his family in Mexico, he will have to pay out of pocket for their medical care. He indicates that he will have to buy water for himself and his family because of the contaminated drinking water in Mexico. The applicant's spouse also states that he fears that his son will drop out of school before completing his secondary education to work in order to help the family. The applicant's spouse asserts that he is concerned that the only job he will be able to obtain in Mexico is that of a field hand, which will not pay him enough to provide his family with the basic necessities.

The AAO acknowledges the applicant's spouse's claims on the impact of relocation. However, we do not find the record to support them. The record does not contain documentary evidence, e.g., published materials on Mexico's economy, and the health care system that establishes the applicant's spouse would not be able to obtain employment in Mexico that would allow him to support himself and his family. The AAO acknowledges the statistical report from Nationmaster.com indicating that 37.7 percent of Mexico's work force earns under $2 a day. However, in this case, the applicant has not provided evidence to establish that her spouse will not be able to find employment other than as a field hand and that he will earn less than $2 a day. Furthermore, given the applicant's spouse's employment history as a concrete finisher and the job skills he has acquired as a result, the record does not establish that he would be limited to minimum wage employment.

The AAO notes that while the applicant's spouse claims that his family will not want to visit him in Mexico because of drug-related violence, the applicant has not indicated how her spouse will be impacted by the violence. The AAO observes that if the applicant's spouse were to relocate to Mexico, he will be residing in Tijuana, Mexico, with the applicant as that is the town where the applicant and her spouse were born and the applicant's parents currently live there. The AAO also notes that the high level of drug-related violence in Mexico has prompted the U.S. Department of State to issue a travel warning advising U.S. citizens against travel to certain areas of Mexico, and that [redacted] Mexico, and towns along the U.S. Mexico border are areas identified by the Department of State in its travel warning as prone to drug-related violence.

While the U.S. Department of State has identified Tijuana, Mexico, as one of the areas prone to drug-related violence, the applicant does not claim that this violence will cause extreme hardship to her spouse.

The AAO acknowledges that the statistical report from Nationmaster.com indicates that the male school life expectancy in Mexico is 11.6 years and the proportion of 15-year-olds in secondary education in Mexico is 42 percent. However, the report does not establish that the education the applicant's son will receive in Mexico is inferior or that the applicant's son will drop out of school and not complete his secondary education, and that the applicant's spouse will suffer hardship as a result.

While the AAO acknowledges the applicant's claim on the impact of relocation on her son, we note that children are not qualifying relatives under section 212(i) of the Act. Any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. As discussed above, the report from Nationmaster.com does not demonstrate that the applicant's son would receive an inferior education in Mexico or would drop out of school before completing his secondary education, which will result in hardship to the applicant's spouse. The AAO also notes that the record does not establish that the applicant and her spouse have a son.

Based on a review of the totality of the evidence of record, the AAO finds that the applicant has failed to establish that her spouse would suffer extreme hardship upon relocation.

The applicant's spouse asserts that he will suffer emotional and financial hardship if separated from the applicant. He states that he needs the applicant in the United States to help take care of his son so that he can concentrate at work. The applicant's spouse asserts that without the applicant's help, he will either have to reduce his hours at work or pay for aftercare for him, which will result in financial hardship. The applicant's spouse states that if the applicant is removed to Mexico, it will be very difficult for him to financially support himself and his son in the United States while supporting the applicant in Mexico. He contends that each month he pays $1,000 in rent, $400 on credit cards, $125 for car insurance and $135 for electricity and that additional money goes to food, gasoline and other necessities. The applicant's spouse states that it will be a mental strain for him to be separated from the applicant and that he cannot imagine how he will survive without the applicant.

The applicant's spouse asserts that his son needs both parents, and that it would be very hard on his son to have to grow up without the applicant as his role model. The applicant's spouse also asserts that for his son to grow up and develop into a healthy, productive citizen, he must have his mother with him at home.

In support of these assertions, the record contains a statement prepared by [redacted], dated April 15, 2009. [redacted] states that the applicant's spouse was seen by him on this date, that the applicant's spouse complained of insomnia and occasional headaches. [redacted] notes that the applicant's spouse was depressed and anxious, and that he recommended that the applicant's spouse receive counseling for stress management and schedule a follow-up visit if medication was required.

Although the input of any mental health professional is respected and valuable, the AAO notes that [redacted] statement fails to provide the type of detailed mental health analysis required by the AAO to determine the impact of separation on the applicant's spouse's mental health. While [redacted] notes that the applicant's spouse is depressed and anxious, he fails to identify the applicant's spouse's symptoms or indicate how these symptoms have affected the applicant's spouse's ability to meet his daily

responsibilities, including going to work. Accordingly, we find [redacted] statement to be of limited value in reaching a determination of extreme hardship.

In support of the financial hardship claims made by the applicant's spouse, the record contains a lease agreement, W-2 Wage and Tax Statements and earnings statements for the applicant's spouse, income tax returns, bills and bank statements. While the AAO notes these documents, we do not find them to demonstrate that the applicant's spouse would experience financial hardship upon separation from the applicant. We also find the record to lack any evidence related to the costs of the aftercare that the applicant's spouse asserts his now 15-year-old son would require in the applicant's absence. Additionally, there is no documentary evidence to demonstrate that the applicant's spouse would require financial support from the applicant in Mexico or the extent of that support. Therefore, without documentary evidence of the applicant's spouse's other financial obligations, the AAO is unable to determine the extent of any financial hardship the applicant's spouse may experience upon separation from the applicant.

While the AAO acknowledges the claims made by the applicant's spouse regarding the impact of separation on his son, we again note that children are not qualifying relatives under section 212(i) of the Act and any hardship to them must, therefore, be evaluated in terms of its impact on the qualifying relative. In this case, other than the statement from the applicant's spouse, the record lacks any documentation to demonstrate the hardships that the applicant's son would suffer if separated from his mother or that these hardships would result in hardship to his father.

Based on our review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he continues to reside in the United States without the applicant.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, she has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found her 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 a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* 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.