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

#15

Date: JAN 04 2012

Office: HARLINGEN

FILE: [REDACTED]

IN RE: [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:

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,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Harlingen, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes 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 having procured entry to the United States by fraud or willful misrepresentation. Specifically, the applicant listed her maiden name when she applied for a Border Crossing Card in 2000, when in fact she was married to a U.S. citizen. *See Record of Sworn Statement*, dated January 21, 2009. On appeal, the applicant does not contest this finding of inadmissibility. Rather, she is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children, born in 1995, 2004 and 2006.

The field office director determined that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 13, 2009.

On appeal, counsel for the applicant submits the following: a brief, dated July 9, 2009; birth and marriage certificates for the applicant and her family; affidavits from the applicant and her spouse; school records for the applicant's children; a conditional sales agreement for homestead; and tax returns from 2004 through 2008. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides:

- (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 immigrant 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a 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-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 applicant's U.S. citizen spouse contends that he will experience hardship were he to remain in the United States while his wife relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse asserts that he has been married to his wife since 1995 and during that time, they have formed an extremely close and strong family unity and bond. Consequently, he contends that he cannot imagine a greater hardship than being separated from her and being forced to live away from her. He further explains that he is currently employed, but a second income in the household if the applicant remained in the United States would make things much easier. Finally, the applicant's spouse references the hardships his children would face were their mother to relocate abroad due to her inadmissibility. *Affidavit of [REDACTED]* dated July 9, 2009. In a separate affidavit, the applicant contends that she is the primary caregiver for the three children as her husband's job keeps him busy and were she to relocate abroad, the burden of raising three children on his own would cause her husband hardship. *Affidavit of [REDACTED]* dated July 9, 2009.

To begin, no supporting documentation has been provided establishing the emotional hardships the applicant's spouse contends he and his children will experience were the applicant to relocate abroad due to her inadmissibility. Moreover, it has not been established that the applicant's children would be unable to relocate to Mexico to reside with their mother, thereby ameliorating the hardships referenced with respect to having to care for three children on his own. Alternatively, no supporting documentation has been provided to establish that were the children to remain with the applicant's spouse in the United States, he would be unable to properly care for them. Finally, no documentation has been provided establishing that the applicant would be unable to obtain gainful employment in Mexico to assist in the finances of the U.S. household. The records indicates that she was previously employed in Mexico, as both a teacher and as an employee of her father's company. 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)).

The AAO recognizes that the applicant's U.S. citizen spouse will endure hardship if he is separated from his wife on a long-term basis as a result of her inadmissibility. However, his situation, if he resides 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.

With respect to relocating abroad to reside with the applicant, the applicant's spouse contends that he cannot care for himself, his wife and his children by working in Mexico due to the lack of employment opportunities. The applicant's spouse further notes that commuting back and forth on a daily basis to work in the United States is hardship. He explains that he worked in Texas and dropped his son off at school in Texas from 2005 to 2007 and it was difficult. Finally, the applicant's spouse asserts that Mexico is not safe and his children would be at greater risk as they are American with an American father. *Supra* at 2.

Counsel has not provided any supporting documentation establishing the emotional and financial hardships the applicant's spouse references he experienced when he resided abroad with his wife from 2000 to 2007. In addition, no supporting documentation has been provided establishing that the applicant's spouse and/or children would be at risk in Mexico. The AAO notes that they resided in Mexico for years without incident. Moreover, the AAO notes that the applicant asserts that while they were in Mexico together, her husband commuted to and from work in the United States and "we were living comfortably..." *Supra* at 1. She notes she was working as a teacher in 2000 and then left teaching to work for her father at his transport company full-time. *Supra* at 1. It has thus not been established that the applicant's spouse would experience extreme hardship were he to reside in Mexico with his spouse, as he did for many years.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The application is denied.