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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H5

Date: JAN 12 2012 Office: CHICAGO 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:

[redacted]

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 Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her U.S. Citizen spouse.

In a decision dated June 25, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* June 25, 2009.

The record contains the following documentation: two affidavits submitted by the applicant's spouse; a brief filed by the applicant's attorney with the Form I-290B, Notice of Appeal or Motion; a brief filed by the applicant's previous attorney in conjunction with submitting the Form I-601, Application for Waiver of Grounds of Inadmissibility; employment document for the applicant's spouse and other financial documentation; medical documentation for the applicant; letters of support; and country conditions information on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

During an interview with the applicant on June 23, 2008, in regard to a Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant stated that prior to entering the United States on March 28, 1993, a coyote gave her a false green card, which she showed to U.S. immigration authorities. The applicant stated she returned the green card to the coyote as soon as she entered the United States. The applicant submitted the Form I-601, Application for Waiver of Grounds of Inadmissibility on July 3, 2008. Under Section A, item 10 of the Form I-601, Reason for Inadmissibility, the applicant stated, "I entered the United States using a false green card that was given to me by a coyote." On appeal, the applicant's counsel asserts that the applicant did not enter

[1] The applicant's attorney stated that the Board of Immigration Appeals has jurisdiction to adjudicate this appeal pursuant to 8 C.F.R. § 103.3(a)(1)(ii). *See Brief in Support of Appeal.*, dated September 28, 2009, at Section II. However, the Administrative Appeals Office has jurisdiction over Form I-290B, Notice of Appeal or Motion, to adjudicate decisions of Forms I-601, Applications for Waiver of Grounds of Inadmissibility.

the United States by presenting a false legal resident card, but was inspected and admitted at the port of entry without presenting any documents. Counsel asserts that the misstatement of fact regarding the events at the time of the applicant's entry to the United States was an apparent error by prior counsel.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. In view of the applicant's testimony before an Immigration Officer during the interview on June 23, 2008 regarding her use of a legal permanent resident card that did not belong to her, and subsequent statements submitted in conjunction with the Form I-601 Application for Waiver of Grounds of Inadmissibility, the AAO finds that the applicant has not met her burden, and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 husband is the qualifying relative in this case.[2] 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

[2] The AAO notes that the applicant's mother also resides in the United States, and is a lawful permanent resident of the United States. However, the record does not contain any documentation or evidence of any extreme hardship to the applicant's mother should the waiver be denied, and, as such, the AAO is unable to consider any extreme hardship to the applicant's other qualifying relative.

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 attorney asserts that the applicant's qualifying relative will suffer extreme hardship due to the financial impact resulting from the applicant's departure from the United States. *See Brief in Support of Appeal*, dated September 28, 2009. The record indicates that the applicant's spouse is gainfully employed. *See Letter of* [redacted] *Marengo, Illinois*, dated August 28, 2009. Financial documentation in the record includes mortgage statements of the applicant's spouse. The applicant's spouse contends that he is the sole wage-earner in the family, and that he would probably have to remain in the United States if the applicant's waiver is denied, and send money to the applicant. *See Affidavit of* [redacted] dated September 11, 2008. The evidence in the record in insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence, or that having to support two households amounts to financial hardship beyond the common results of removal or inadmissibility. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986); see also *INS v. Jong Ha Wang*, 450 U.S. 139, 142 (1981) (holding that economic detriment is not sufficient to establish extreme hardship under the Act).

The applicant's previous counsel contended that the applicant's spouse will suffer emotional hardship if the applicant is not granted a waiver. *See Brief of* [redacted], submitted with Form I-601. The applicant's spouse states that he would be devastated if the applicant were not in the United States, and that he would struggle to raise his daughters alone. *See Affidavit of* [redacted] dated September 11, 2008. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the evidence on the record.

The record includes medical documentation indicating that the applicant suffers from hypertension and had surgery in 2008 for a middle ear condition. However, the statute sets forth that only hardship to qualifying relatives, and not the applicant, may be considered, and factors relating to the applicant herself can only be considered insofar as they may affect the hardship to a qualifying relative. *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), at 63.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse and mother are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's qualifying relatives.

The applicant's counsel states that the applicant's spouse cannot relocate to Mexico, as it will result in a loss employment, loss of ownership of their home, and the loss of the family's standard of living. *See Brief in Support of Appeal*, dated September 28, 2009. As noted above, courts

considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). It has not been established in the record that the applicant's spouse would be unable to support his family were they to relocate to Mexico. Further, the applicant's spouse has not addressed whether he has family ties in Mexico, other than noting that his parents reside in Mexico on Form G-325A, Biographic Information, filed on May 30, 2007, and thus the AAO is unable to ascertain whether and to what extent the applicant's spouse would receive assistance from family members for both himself and his family. Based on the evidence on the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

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 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 and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.