

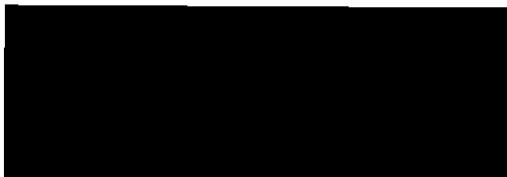
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

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Date: **JUL 18 2012** Office: **CIUDAD JUAREZ, MEXICO**

FILE: [REDACTED]

IN RE: [REDACTED] 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in cursive ink that appears to read "Perry Riney".

Perry Riney
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and the father of two children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and son.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 29, 2009.

On appeal, the applicant claims that it is "very sad" to live apart from his family, and since his wife is a lawful permanent resident of the United States, she "needs to live in the United States." *Form I-290B, Notice of Appeal or Motion*, dated August 25, 2009.

The record includes, but is not limited to, a statement from the applicant's wife in Spanish¹, evidence of the applicant's wife's lawful permanent resident status in the United States, and an approved petition for alien relative. The entire record was reviewed and considered, with the exception of the Spanish-language statement, in arriving at 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As the statement from the applicant's wife is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

- (1) The [Secretary] may, in the discretion of the [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 [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.

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 of Immigration Appeals (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.

In the present case, the record indicates that in 1993, the applicant entered the United States by presenting a border crossing card in someone else's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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).

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

On appeal, the applicant states that because his wife is a lawful permanent resident of the United States, she "needs to live in the United States." Additionally, since his son was born in the United States, he is accustomed to living in the United States and would not like living in Mexico. The applicant claims that it is difficult to find work in Mexico, and the crime is "very bad," making him afraid to leave the house. The AAO notes that on February 8, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [transnational criminal organizations (TCO's)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... [C]rime and violence are serious problems throughout the country and can occur anywhere." The warning also

states U.S. citizens have been the victims of several types of violent crime, and the rise in “kidnappings and disappearances throughout Mexico is of particular concern.” The record establishes that the applicant resides in the state of Michoacán. *See Form I-130, Petition for Alien Relative*, filed March 21, 2006. The warning recommends that “non-essential travel to the state of Michoacán except the cities of Morelia and Lázaro Cárdenas” should be deferred. Additionally, “[a]ttacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacán.”

The AAO acknowledges that the applicant’s wife has resided in the United States for many years and that relocation abroad would involve some hardship. The applicant’s wife, however, is a native of Mexico and it has not been established that she is unfamiliar with the culture or that she has no family ties there. Regarding the hardship that the applicant’s son may experience in Mexico and the hardship that the applicant claims he is suffering in Mexico, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to himself and their son would elevate his wife’s challenges to an extreme level. Though the applicant’s security concerns about Mexico are corroborated by the State Department travel warning, this warning alone does not support a finding of extreme hardship to the applicant’s wife should she return to Mexico. Additionally, although it may be difficult for the applicant’s wife to maintain her U.S. lawful permanent resident status should she move to Mexico, the record lacks evidence showing that this hardship would be extreme. Moreover, the record lacks evidence of other hardships the applicant’s spouse may experience as a result of relocation to Mexico. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Mexico.

In addition, the record fails to establish extreme hardship to the applicant’s wife if she remains in the United States. The applicant claims that he is alone in Mexico, and it is “very sad” to live away from his family, which is “very united.” The applicant claims that his son sends him money in Mexico, but it is insufficient and it is “very difficult to live in this situation.” As noted above, the applicant is not a qualifying relative, and he has not shown that hardship to himself would elevate his wife’s challenges to an extreme level. The AAO notes that no claims are made regarding the applicant’s wife’s hardship in the United States. Because the record does not include sufficient documentation of financial, medical, or other types of hardship that the applicant’s wife would experience if she remained in the United States, the AAO finds the applicant did not show that his wife will suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he 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. *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.