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



U.S. Citizenship
and Immigration
Services

DATE: APR 25 2013

Office: RENO, NV

FILE: [REDACTED]

IN RE:

APPLICANT: [REDACTED]

APPLICATION:

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

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 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,

f. Ron Rosenberg
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Reno, Nevada. 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)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, Unlawful Contact with a Child, in 2007. The applicant does not contest the inadmissibility but rather seeks a waiver of inadmissibility pursuant section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to live with his U.S. citizen spouse and child in the United States.

The Acting Field Office Director found that the applicant failed to establish his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Acting Field Office Director*, dated August 7, 2012.

On appeal counsel for the applicant asserts the applicant had submitted evidence of extreme hardship and that further hardship had occurred since the acting director's decision. On appeal counsel submits a statement from the applicant's spouse; a birth certificate for the applicant's son; and health information for the spouse's father. Counsel stated that further information would be forthcoming, but no additional submissions were received into the record from counsel.

The record contains a family mental health assessment; medical and school information for the applicant's spouse; financial documentation; employment information for the applicant; and letters of support for the applicant from family and church. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the

Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted on October 16, 2007, of Unlawful Contact With a Child, in violation of NRS 207.260(4)(a), in [REDACTED]. As the applicant has not contested inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

A section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. See section 212(h) of the Act, 8 U.S.C. § 1182(h). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (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.

On appeal the applicant’s spouse asserts that she and her children depend on the applicant and that relocating to Mexico would be a health risk. She states she and her children will have a difficult time learning Spanish and it will be difficult for her to find work. She states that she is close to her family in the United States, particularly her father, who due to illness requires weekly dialysis. She states that she wants her father to live with her for his well-being and that her mother has developed a lump in her breast requiring a visit to her doctor for diagnosis, thus both parents need her. She states that she has a close relationship to older siblings and that the applicant also has many relatives in the United States, so he would suffer depression if he were away from his family. The spouse asserts that she needs the applicant for emotional, mental, and financial support and to raise her children. She further states that she dreams of becoming a nurse and the applicant provides her with moral support.

The record contains a letter from a physician indicating that the spouse’s father has kidney failure with debilitating symptoms and that weekly dialysis causes him fatigue.

A family mental health assessment identifies that the spouse had a difficult childhood, being abused and observing abuse to her mother and being truant, and she has a history of miscarriages and pregnancy complications. The assessment states the applicant’s spouse shows signs of separation anxiety and recurring distress as the applicant was working away from home during the week. The assessment further states that the applicant’s spouse could experience severe depression and that separation from the applicant could bring back trauma of her earlier forced separation from the applicant after his 2007 conviction.

The AAO finds the record to establish that the applicant’s spouse would experience extreme hardship if she were to relocate to Mexico to reside with the applicant. The record establishes that the applicant’s U.S. citizen spouse was born in the United States and has no ties to Mexico. She would have to leave

her family, most notably her parents, both of whom are experiencing health problems, as well as her siblings, her community and her educational pursuits. She would be concerned about her ability to communicate in Spanish and potential difficulty finding employment and concerned because of poor health conditions and access to adequate medical treatment. Documentation on record establishes the applicant's spouse has a history of complications during pregnancy and future pregnancies are considered high-risk. Thus it has been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

The AAO finds, however, that the applicant has failed to establish that his qualifying spouse and child will suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse states she will experience depression if separated from the applicant, but failed to provide any detail explaining the exact nature of her emotional hardships. The mental health assessment identifies the spouse as experiencing distress and anxiety, but the assessment stems from a single interview rather than from an established relationship with a provider. The record contains no evidence that any emotional hardships experienced by the applicant's spouse are outside the ordinary consequences of removal.

The applicant's spouse states that she needs the applicant for financial support, but no documentation was submitted to the record establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. 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.").

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains 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.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Having found the

applicant statutorily ineligible for relief, 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. 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.