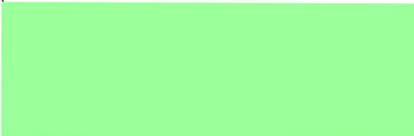


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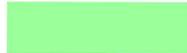


U.S. Citizenship
and Immigration
Services



Date: **FEB 12 2013**

Office: LOS ANGELES

FILE: 

IN RE: Applicant: 

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

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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The director stated that the applicant sought a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h), and 8 U.S.C. § 1182(i), respectively. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and that a favorable exercise of discretion was warranted.

In the brief dated June 28, 2010, counsel asserts that the applicant established extreme hardship to his lawful permanent resident spouse and U.S. Citizenship and Immigration Services (USCIS) applied an incorrect hardship standard, and failed to properly weigh the hardship factors. Citing *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996), counsel contends that USCIS did not consider the cumulative effects of the hardship factors. Counsel declares that the applicant has been married to his wife for over 27 years, and they have U.S. citizen sons and a lawful permanent resident daughter. Counsel asserts that the Ninth Circuit Court of Appeals held in *Watkins v. INS*, 63 F.3d 844 (9th Cir. 1995), that family separation is an important hardship factor, and USCIS did not consider the longevity of the applicant's marital relationship. Counsel contends that the applicant's wife relocation to Mexico will separate her from her sons and daughters as well as her lawful permanent resident parents, who all reside in the United States. Counsel states that the applicant's wife is unemployed and has health problems, menorrhagia, anemia, and rheumatoid arthritis; and her health insurance is provided by her husband's employer.

Counsel argues that a favorable exercise of discretion is warranted in the present case. Counsel asserts that in *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970), the Board of Immigration Appeals (Board) held that adverse factors can be offset by a showing of unusual or outstanding equities, and the outstanding equities in the applicant's case offset inadmissibility for misrepresentation and conviction of a crime involving moral turpitude.

The AAO will first address the finding of inadmissibility.

The director determined the applicant was inadmissible for having committed a crime involving moral turpitude under section 212(a)(2)(A) of the Act.

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

- (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.

The Board held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

On February 28, 1996, the applicant pled *nolo contendere* to infliction of corporal injury on a spouse in violation of section 273.5(a) of the California Penal Code. The judge accepted the plea and convicted the applicant. The judge suspended imposition of the sentence and placed the applicant on probation for 36 months. The judge ordered that the applicant serve 20 days in jail, complete a one-year domestic violence counseling program, attend Alcoholics Anonymous meetings, and perform community service; and issued a protective order against the applicant.

The director determined that the applicant's conviction for infliction of corporal injury on a spouse was a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

Section 212(h) of the Act provides a waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. It states:

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated . . .

The director concluded that the applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation.

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.

USCIS records show that on April 25, 1998, the applicant sought to gain admission into the United States at the port of entry in San Ysidro, Texas, by presenting to the inspector a valid Resident Alien Card (I-551) in the name [REDACTED] which he had obtained from a vendor in Tijuana. In light of the record, the applicant is inadmissible under section 212(a)(6)(C) of the Act for seeking to procure admission into the United States based on the willful misrepresentation of the material fact of his identity and eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states:

- (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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen wife is the only qualifying relative in this case. As the standard of hardship for a section 212(i) waiver is higher than that of the section 212(h) waiver, we will apply the higher standard in the present case. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The evidence in this case includes declarations, photographs, social security records, birth certificates, tax records, a marriage certificate, medical records, financial records, information about rheumatoid arthritis and menorrhagia, college records, as well as other documentation.

The applicant's wife asserted in her declarations dated May 23, 2006 and April 29, 2008 that she has a close bond with her husband, with whom she married on December 9, 1983. The applicant's wife stated that she takes medication for osteoporosis and anemia, had emergency surgery in September 2007 to remove her gallbladder, and may require a hysterectomy. She declared that her husband pays her medical expenses and is the primary source of her family's income, and she would lose her

house without his income. The applicant's wife asserted that she cannot work due to her rheumatoid arthritis and is worried about having diabetes in the future.

The applicant's wife conveyed that her U.S. citizen parents have health problems, and her sons are college graduates, and they will not leave the United States to live in Mexico. The applicant's wife contended that she would lose her lawful permanent resident status and access to the medical care she receives in the United States if she relocated to Mexico; and that her husband has a stable, well-paying job in the United States that provides health insurance. She asserted that in Mexico there is no future, they would have to start over, and her husband would not find a comparable job that provides health benefits and financial support. The applicant's wife asserted that they have homeownership and a good standard of living in the United States, which they would not have in Mexico. She conveyed that she is distressed about the crime, violence, and kidnapping in Mexico. Lastly, she stated that there was a misunderstanding about her husband's arrest for domestic violence because he did not strike her. She asserted that they had an argument and she slapped him, and she fell from her husband pushing her off. The applicant's wife stated that she did not want to press charges, and an incident like this has never reoccurred.

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-I-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 1292, 1293 (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.

The asserted hardships to the applicant’s wife in remaining in the United States while the applicant lives in Mexico are separation from her husband, loss of health insurance, and lack of financial resources for the mortgage and household expenses. The submitted financial records are in accord with the applicant’s wife’s contention of financial dependence on the applicant; they reflect that she is not employed, she has a monthly mortgage of \$1,050, and an outstanding principle balance of \$72,011. We acknowledge that the record establishes that the applicant’s wife has health problems. Dr. [REDACTED] letter dated April 9, 2008 stated that the applicant’s wife has rheumatoid arthritis and her condition was not controlled and required follow-up visits. Dr. [REDACTED] stated in the undated letter that she saw the applicant’s wife for the first time in March 2008 for severe menorrhagia, and in several months will determine whether she will need a hysterectomy. While we give weight to the aforementioned evidence, the applicant has not addressed the possibility that his sons, who have employment as a police officer and a financial aid advisor, could financially support their mother and purchase health insurance for her. We recognize that the applicant’s wife has a close relationship with her husband and will experience hardship in separating from him. However, when the asserted hardship factors are considered together, they do not demonstrate the hardship to the applicant’s wife will be more than the common result of hardship and, therefore, extreme.

The declared hardships in relocating to Mexico are not being able to obtain a job that will support them and provide health benefits, lack of access to health insurance and health care comparable to what they receive in the United States, enduring a lower standard of living, family separation, loss of lawful permanent resident status, and distress about risks to personal safety. The concern of the applicant’s wife about violent crime and kidnapping in Mexico is in agreement with the submitted U.S. Department of State information. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2007: Mexico* (March 11, 2008); U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2007: Mexico*

(September 13, 2007). The applicant's wife contends that her husband has a well-paying job as a crane operation that provides health insurance, and will not find a comparable job in Mexico. However, the applicant has not provided any evidence in accord with the claim that he will not be able to find a job for which he is qualified in Mexico, will not be able to obtain health care, and live in dire poverty in Mexico. The applicant's wife is anxious about losing lawful permanent resident status. The record indicates that she obtained lawful permanent residency through a Petition for Alien Relative (Form I-130) filed on her behalf by her son, [REDACTED]. Should she lose her lawful permanent residency status, her son would be able to file a new Form I-130 on her behalf. Or the applicant's wife could complete the naturalization process before relocating to Mexico. We acknowledge that the applicant's wife will experience emotional hardship in separating from her adult children and parents. However, when the asserted hardship factors are considered together, they fail to demonstrate that hardship to the applicant's wife in relocating to Mexico will be extreme, in that it is more than the common result of inadmissibility.

We note that even had the applicant demonstrated extreme hardship, because it appears she was convicted of a violent crime, she would have to meet the requirements of 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion.

In conclusion, the applicant has not demonstrated that the hardships to his wife meet the extreme hardship standard as required under the Act. 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 sections 212(h) and 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.