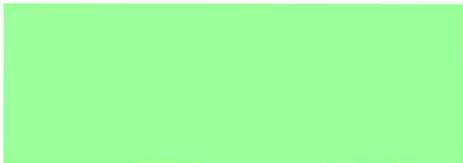




U.S. Citizenship  
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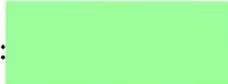
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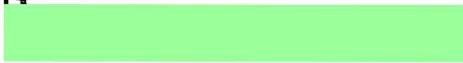
OFFICE: TAMPA, FL

FILE:



FEB 13 2013

IN RE:



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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tampa, Florida 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 to the United States pursuant to 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 committed a crime involving moral turpitude. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The Field Office Director found that the applicant had failed to demonstrate that his inadmissibility would result in extreme hardship for a qualifying relative. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated July 26, 2011.

On appeal, counsel states that the applicant's spouse and daughter will experience extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated August 16, 2011; *Counsel's brief in support of the appeal*.

The record of evidence includes, but is not limited to: counsel's briefs; statements from the applicant, his spouse and his mother-in-law; medical documentation relating to the applicant's spouse and daughter; a psychological evaluation of the applicant's spouse; a listing of the applicant's and his spouse's financial obligations and supporting documentation; earning statements for the applicant and his spouse; a 2009 tax return; W-2 Wage and Tax Statements for the applicant's spouse; mortgage modification documentation; letters of support from family members; country conditions information on Mexico; and court records relating to the applicant's convictions. The entire record was reviewed and all relevant evidence considered in reaching a 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 –

a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record reflects that on January 12, 2006, the applicant pled guilty to Burglary, 720 Illinois Consolidated Statutes (ILCS) § 5/19-1(a), a Class 2 felony carrying a sentence of three to seven years.<sup>1</sup> He was placed on probation for 18 months. As the applicant has not contested his inadmissibility on appeal, and the record does not show that finding to be in error, we will not disturb the determination of inadmissibility.

A waiver of a section 212(a)(2)(A)(i)(I) inadmissibility is found in section 212(h) of the Act, which states in pertinent part:

<sup>1</sup> The record also indicates that the applicant pled nolo contendere to No Valid Drivers License, Florida Statutes § 322.03(1), on June 15, 2005 and was fined \$160.

(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)(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 [Secretary] 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 . . . .

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives in this proceeding are the applicant's U.S. citizen spouse and daughter. Accordingly, hardship to the applicant or other family members will be considered only insofar as it results in hardship to these individuals. 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-Morales*, 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 BIA 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 BIA 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 BIA 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 BIA 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.

On appeal, counsel states that the applicant is critical to his family’s financial stability. He asserts that the income he provides, which is about 30 percent of his and his spouse’s combined income, has allowed them to be approved for a modification of their home mortgage loan. Without the applicant’s financial support, counsel contends, his spouse would default on this loan, losing her home and leaving her and their daughter homeless. Counsel also states that the applicant and his spouse share childcare responsibilities for their daughter, with the applicant working during the day and his spouse at night. He maintains that, without the applicant, the applicant’s spouse would have to cut back on her hours of employment or pay exorbitant fees for childcare, thereby exacerbating the family’s financial crisis.

Addressing the applicant’s ability to provide financial support to his spouse from outside the United States, counsel asserts that it is unlikely that the applicant would immediately obtain employment upon return to Mexico and that, even if he were to find work, he would not earn the income he makes in the United States. Counsel also states that the applicant has not lived in Mexico since he was seven-years-of-age and that he is no longer familiar with the customs of the country and has no close relatives to help him adjust and find employment.

In an August 12, 2011 statement, the applicant’s spouse states that when she was pregnant with her daughter, she was diagnosed with pre-eclampsia, a condition that runs in her family. She indicates that her blood pressure was so high that she was at risk of seizure and was put on complete bed rest during the last week of her pregnancy. As a result of her condition, the applicant’s spouse reports, her daughter was delivered a month early, on May 7, 2011, with low birth weight, fluid in her lungs and an incipient infection.

The applicant’s spouse states that because her daughter requires close monitoring during the day, she works a 12-hour night shift, while the applicant is at home with their daughter. She asserts that,

without the applicant, she would not be able to work at night and that she cannot work during the day because no infant daycare facility provides care for 12 hours a day, the minimum number of hours she needs to work. The applicant's spouse contends that her 12-hour shifts and the applicant's full-time employment are necessary if they are to keep up with their expenses. She also notes that the applicant is her sole supporter in her new role as a mother since she has no family in Florida, where she and the applicant live. If the applicant is removed, his spouse contends, she would probably be forced to quit her job as she would have no one to take care of their daughter and would have to move back to Illinois where her family lives. She further states that she has had to quit school because her work will no longer pay for it and she cannot afford it herself.

With regard to the financial hardship she would experience in the applicant's absence, the applicant's spouse states that she and the applicant have a \$262,751 mortgage on which she previously defaulted, but that their combined income has made it possible for them to obtain a loan modification that has allowed them to keep their home. She asserts that without the applicant's income, they will again default on their mortgage and the bank will take away their home, ruining her credit and any chance to start over.

In conclusion, the applicant's spouse asserts that the applicant's removal would negatively affect her and her daughter's futures, turning her into a single mother and her daughter into a fatherless child. She states that single mothers are more vulnerable to poverty and more likely to become a burden on the government, and that fatherless children are more likely to suffer from depression, alienation and all kinds of social, emotional and economic challenges.

In support of the preceding claims of financial hardship, the record contains a 2011 listing of the applicant's and his spouse's monthly expenses. It also includes a number of earnings statements for the applicant from 2010, which indicate that he earns \$10 an hour or \$400 for a 40-hour-week, taking home approximately \$350 for a full week of work or \$1,400 a month. We also note that there are several 2010 earnings statements for the applicant's spouse, which establish her monthly income as being \$2,800 to \$2,900, with a net income of \$2,100 to \$2,200 per month. The record further includes an April 27, 2010 statement from the [REDACTED] agreeing to a modification of the applicant's and his spouse's mortgage loan and setting their monthly payment at \$1,050.85. The applicant has also submitted several billing statements for the car he and the applicant lease, which establishes their car payment as being \$338.41 a month. No other documentary evidence relating to the applicant's and his spouse's 2010 or 2011 monthly financial obligations is found in the record.

Documentation of the applicant's statements regarding her problem pregnancy is provided by an August 10, 2011 statement from [REDACTED], Physicians' Primary Care in which [REDACTED] reports that the applicant's spouse's blood pressure required close surveillance during her pregnancy and that her baby's fetal growth was also monitored. [REDACTED] further notes that both issues are likely to arise in a future pregnancy and if not closely monitored, could result in an adverse outcome for both mother and infant. An August 12, 2011 statement from Dr. [REDACTED] establishes that the applicant's daughter was born prematurely. He also indicates that at the time of her birth, the applicant's daughter was diagnosed with low birth weight, difficulty feeding and temperature instability and that he is seeing her for feeding issues.

The applicant has also submitted a June 14, 2010 statement from licensed psychotherapist [REDACTED] who states that she interviewed the applicant's spouse on June 11,

2010. [REDACTED] reports that the applicant's spouse informed her that she was experiencing some symptoms of depression and anxiety as a result of the applicant's immigration issues, including difficulty sleeping, nightmares, and feelings of sadness and anxiety. [REDACTED] statement also indicates that she administered the Beck Depression Inventory to the applicant's spouse, who scored in the mild/moderate range for depression. [REDACTED] finds the applicant's spouse's test results to demonstrate that she is experiencing several symptoms of depression that are serious and persistent. She concludes that the applicant's spouse is extremely emotionally dependent on the applicant and vulnerable to a range of emotional issues (Major Depressive Disorder, Generalized Anxiety Disorder or an Adjustment Disorder with depression and anxiety) if he is removed, as her relationship with him began when she was quite young. [REDACTED] states that she believes that the applicant's spouse's emotional state would significantly worsen if the applicant is removed.

The record includes a 2009 Human Rights Report: Mexico, issued by the Department of State on March 11, 2010, which indicates that, in 2009, the minimum wage in Mexico did not provide a decent standard of living for a worker and family.

Having reviewed the record, the AAO does not find it to contain sufficient evidence to establish that the applicant's spouse and/or daughter would experience extreme hardship if the waiver application is denied and they remain in the United States without the applicant. Although we note the claims of financial hardship and the documentation that establishes the applicant's and his spouse's mortgage and car payments, we do not find similar evidence to support the other financial obligations indicated in the submitted list of monthly expenses. Moreover, the record offers no documentary evidence, e.g., published materials on the Mexican economy or unemployment, to establish that the applicant would not be able to assist his spouse and daughter financially from outside the United States, as claimed by counsel. While we note that the 2009 Human Rights Report: Mexico states that the minimum wage in Mexico does not provide a decent standard of living for a worker and family, we find no evidence in the record that demonstrates the applicant would be limited to minimum wage employment if he returned to Mexico. Instead, it offers evidence that the applicant has gained work experience while in the United States, including that from his current employment with [REDACTED] and his two years as an electrician's helper for [REDACTED] during which time he also attended the [REDACTED] as noted in a June 22, 2010 statement from [REDACTED]

The record also fails to establish that the applicant's spouse is dependent on the applicant for childcare because she must work a 12-hour night shift. Although we note the applicant's spouse's claims regarding her employment, no documentary evidence in the record supports these assertions. The most recent documentary evidence relating to the applicant's spouse's employment are the previously discussed 2010 earnings statements, which indicate that the applicant's spouse was then working a 40-hour week, with few overtime hours. We also acknowledge the applicant's spouse's assertion that her daughter requires close monitoring during the day, as well as Dr. [REDACTED] August 12, 2011 statement indicating that he is seeing the applicant's daughter for feeding issues. The record, however, fails to document what type of monitoring is required by the applicant's daughter during the day, the severity of the feeding issues being treated by Dr. [REDACTED] and whether they are chronic, or that the applicant's daughter's condition would pose an undue burden for a single parent.

We also find the record to provide insufficient evidence to establish the emotional impacts of separation on the applicant's spouse. Although we do not question that the applicant's spouse will experience emotional hardship if the applicant is removed from the United States, the brief statement from [REDACTED] lacks the detailed, in-depth discussion of the applicant's mental health status that the AAO requires to reach a determination of emotional hardship.

Therefore, based on the record before us, the AAO does not find the evidence of record sufficient to establish that the applicant's spouse or daughter would suffer extreme hardship if the applicant is removed and they remain in the United States.

Counsel maintains that if the applicant's spouse and daughter were to relocate to Mexico they would experience extreme hardship as a result of drug-related violence. He asserts that as drug-related violence exists in all parts of Mexico, it would be difficult to find a place where the family could live safely. Counsel also contends that the applicant's spouse's situation in Mexico would be exacerbated by the fact that she does not speak Spanish. He states that her gender, citizenship, language abilities and status as a mother of a young child would make her "an easy target for violence in Mexico." Counsel also notes that the applicant's spouse during her recent pregnancy suffered from pre-eclampsia and that, should she become pregnant in Mexico, she would have difficulty finding appropriate medical care for herself and a baby who, like her young daughter, could be born with low birth weight and require monitoring in a neonatal intensive care unit. Mexico, counsel states, has a high infant mortality rate. He notes that 53 percent of the deaths that occur in persons under five-years-of-age in Mexico are neonatal and that 45 percent of these neonatal deaths occur in premature births. Counsel further contends that since the applicant's spouse does not speak Spanish, she would not be able to communicate with her or her newborn's doctors. He also states that the applicant's spouse's inability to speak Spanish would also limit her ability to take her young daughter for medical treatment.

In her August 12, 2011 statement, the applicant's spouse states that as a result of her daughter's premature birth, her daughter needs to be monitored for low weight gain and that the medical care she requires is not easily obtained in Mexico. As a result, the applicant's spouse contends, relocation to Mexico would potentially place her daughter's health at risk. She also maintains that as she does not speak Spanish, she would not be able to obtain employment in Mexico or to continue her education.

The record contains the U.S. Department of State's April 22, 2011 Travel Warning for Mexico, as well as copies of articles from a February 21, 2009 *Wall Street Journal*, an August 9, 2007 *Time Magazine* and May 31, 2010 *New Yorker*, all of which report on the significant impacts of widespread drug violence in Mexico. As previously indicated, the record also includes the 2009 Human Rights Report: Mexico, issued by the Department of State on March 11, 2010, which provides an overview of human rights concerns in Mexico. The report indicates that, in 2009, the minimum wage in Mexico did not provide a decent standard of living for a worker and family.

Also included in the record is the previously discussed August 10, 2011 statement from [REDACTED] Physicians' Primary Care and that of Dr. [REDACTED] dated August 12, 2011. [REDACTED] reports that the applicant's spouse's pregnancy required close monitoring of her blood pressure and fetal growth, and that both of these issues are likely to arise in a future pregnancy. She states that, if not closely monitored, they could result in an adverse outcome for both mother and

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infant. Dr. [REDACTED] states that at the time of her premature birth, the applicant's daughter was diagnosed with low birth weight, difficulty feeding and temperature instability, and that he is currently seeing her for feeding issues. He indicates that these past issues, along with the current feeding issue, are best dealt with by remaining in the United States so that timely and specialty health care can be obtained as needed. He also notes that infants with feeding difficulties do not tolerate less than good hygiene, especially with regard to food preparation.

However, the record contains no country conditions materials demonstrating that adequate medical care would not be available to the applicant's spouse and daughter in Mexico. The AAO acknowledges the premature birth of the applicant's daughter and the applicant's spouse's concerns regarding the removal of her daughter from the supervision of the U.S. doctors who have cared for her since birth and are familiar with her medical history. However, the evidence submitted does not reflect the current health of the applicant's daughter at the time of this decision. In the absence of evidence demonstrating that any necessary follow-up care would be compromised in Mexico, we cannot ascertain what weight this should receive as a hardship factor. We acknowledge that the applicant's spouse's lack of Spanish fluency may cause some hardship, and the travel warning for certain parts of Mexico. However, we find that the record does not reflect a specific threat against the applicant, or that she necessarily will reside in a dangerous area. When we consider the hardship factors raised by the record in the aggregate, we find that the applicant has not demonstrated that his spouse would experience hardship beyond that normally created by relocation.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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.