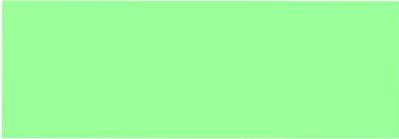


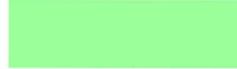


U.S. Citizenship
and Immigration
Services

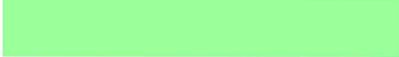
(b)(6)



Date: **FEB 27 2013** Office: LOS ANGELES, CA



IN RE:



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 1182(i)

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, Los Angeles, California, and the subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the underlying waiver application 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)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure benefits under the Act by willful misrepresentation. The AAO found the applicant also inadmissible under 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 crimes involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The field office director found that the applicant failed to establish that his parents would suffer extreme hardship should the applicant reside outside the United States, and denied the Form I-601 application for a waiver accordingly. *See Field Office Director's Decision*, dated September 3, 2008. The AAO also found that the applicant had not established that denial of his waiver application would cause extreme hardship to his parents and dismissed the appeal accordingly. *See AAO's Decision*, dated February 14, 2012.

On motion, the applicant submits a brief from his counsel; medical records for his mother and a letter from his mother's physician; financial evidence, including household bills; information about diabetes, depression, and chronic illnesses; articles about homophobia in Mexico; and minimum wage information for Mexico. The record also includes statements from the applicant, copies of tax filings for the applicant's parents from 1998 and earlier, and documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering a decision on the motion.

A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The applicant's motion meets the requirements of a motion to reopen, and therefore the motion is granted.

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

- (i) . . . any 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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.

In its previous decision, the AAO concluded that the applicant's convictions under California Penal Code § 472 for forgery of an official seal and under California Penal Code § 484(a) for theft are convictions for crimes involving moral turpitude and found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. His failure to reveal his convictions on his Form I-485, Application to Register Permanent Residence or Adjust Status, warrants finding him also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure benefits under the Act by willful misrepresentation. Counsel does not contest the applicant's inadmissibilities. The applicant requires waivers of inadmissibility under sections 212(h) and 212(i) of the Act.

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

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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; or

(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 [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; . . . and

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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

- (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 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 [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. A waiver of inadmissibility under section 212(h) 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, parent, son, or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother and father are the only qualifying relatives in this case. 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).

The record contains references to hardship the applicant and his brother would experience if the waiver application were denied. It is noted that Congress did not include hardship to aliens and their siblings as factors to be considered in assessing extreme hardship. In the present case, the applicant's parents are the only qualifying relatives for the waiver under section 212(i) and 212(h) of the Act, and hardships to the applicant and his sibling will not be separately considered, except as they may affect the applicant's parents, and as a matter of discretion.

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, 631-32 (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, "[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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relatives would experience extreme hardship as a result of his inadmissibility.

On motion, counsel states that the applicant's mother's medical condition is "severe enough to require constant supervision not only from physicians but also those people around her." Counsel states that the applicant's mother needs physical, psychological, emotional, and financial support. According to counsel, the applicant is the only family member able to properly care for his mother, because only he is single, unemployed, and living with her. Counsel states that separation from the applicant would "further deteriorate" the applicant's mother's health. Medical records from the [REDACTED] indicate that the applicant's mother's diabetes was diagnosed in 2000, she treats it with oral medications, she reported no associated complications, and she declined the recommended insulin therapy.

In support of the applicant's motion, counsel resubmits the letter from the applicant's mother's health-care provider, dated December 9, 2011, which reports that she is being treated for diabetes and obesity. Her health-care provider indicates that the applicant's mother had been evaluated for a heart murmur, but results were unavailable. The letter notes that the applicant accompanied his mother to an appointment on November 18, 2011.

Counsel also asserts that the applicant's mother feels "very depressed," and though she has not seen a professional regarding her depression, counsel states that does not mean her depression is not real. In support of his assertion, counsel submits articles regarding depression. Moreover, counsel states that the applicant's mother would not be able to receive adequate health care if she relocates to Mexico and she would lose her status as a U.S. lawful permanent resident.

The applicant has been in the United States since he was 11 years old. Counsel asserts that the applicant does not know anyone in Mexico. Counsel states that the applicant is gay and fears he

could be persecuted in Mexico. The applicant's mother is worried about the applicant possibly returning to Mexico. According to counsel, the applicant's mother's concerns about the applicant make her symptoms worse.

With respect to the applicant's father's hardship, counsel states that the applicant's father is the only income provider for his family and that the whole family would suffer if he relocates with the applicant. Counsel submits the applicant's father's pay stubs showing biweekly earnings of about \$2,000. Counsel asserts that the applicant's father would earn minimum wage in Mexico, and the family would not be able to survive. The applicant's father owns two properties, one of which is an income property. Counsel asserts that if the applicant's father relocates, he would lose his status as a legal permanent resident, and he would lose his properties in the United States.

Upon review, the applicant has not shown that his qualifying relatives would suffer extreme hardship should they separate from the applicant. The AAO acknowledges that the applicant's mother faces health problems that require ongoing medical care. However, the record does not support that she relies solely on the applicant for her care. The applicant has not submitted evidence corroborating assertions that the applicant's siblings and his father are unable to assist his mother with her care. The assertions of the applicant and his spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant also failed to submit evidence corroborating counsel's assertion that his mother has depression. The applicant's mother's medical records indicate that she demonstrated "the appropriate mood and affect" during her medical appointments. The AAO acknowledges that the applicant's mother would experience emotional hardship should she separate from the applicant. However, the record, in the absence of medical or psychological evaluations or other objective reports, does not demonstrate that the applicant's mother has mental or psychological conditions that would amount to hardship beyond what others in a similar situation would experience.

Counsel also states that the applicant's father needs him in the United States, because he relies on him to care for his mother and his teen-age brother. As mentioned earlier, the record does not support that the applicant's mother solely depends on the applicant for her care. Moreover, the applicant fails to corroborate assertions that his teen-age brother requires "constant supervision"

by the applicant that his parents are unable to provide. The applicant also fails to explain how his teen-age brother's hardship would affect his parents, the only qualifying relatives in the instant case. Therefore, the AAO concludes that the evidence submitted, considered in the aggregate, is insufficient to demonstrate that the applicant's parents would experience extreme hardship, should they separate from the applicant.

The AAO finds that the applicant also has failed to establish that his parents would experience extreme hardship if they were to relocate. The record lacks evidence supporting counsel's assertions that the applicant's father would be unable to find employment in Mexico. Information submitted concerning the minimum wage in Mexico, although informative, does not, in and of itself, establish hardship. The record also does not establish that the applicant's mother would be unable to obtain adequate medical care there. With respect to concerns regarding his parents' family ties in the United States, the AAO notes that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, the applicant failed to provide supporting evidence establishing how the loss of their legal permanent resident status in the United States would cause his parents hardship beyond that experienced by others in a similar situation. Therefore, the AAO concludes that the evidence submitted, considered in the aggregate, is insufficient to demonstrate that the applicant's parents would experience extreme hardship, should they relocate.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's parents, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under sections 212(i) and 212(h) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(i) and 212(h) 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 waiver application remains denied.

ORDER: The motion is granted and the waiver application remains denied.