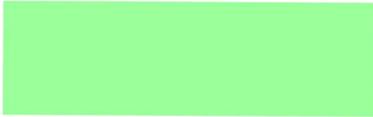




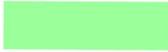
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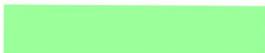
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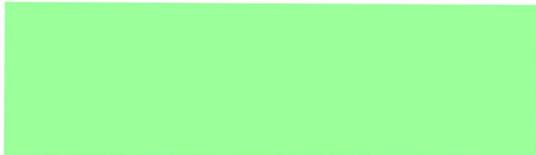
OFFICE: LOS ANGELES

FILE: 

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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO affirmed its decision on a first, second and third motion to reopen. This matter is now before the AAO on a fourth motion. The motion will be granted and the prior AAO decision is affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident mother and father.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to a qualifying relative upon separation and denied the application accordingly. *See Decision of the Field Office Director* dated September 3, 2008. On appeal, the AAO also determined that the applicant failed to establish extreme hardship to a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated February 14, 2012. On the applicant's first, second and third motion, the AAO affirmed its prior decision. *See Decision of the AAO*, dated February 27, 2013; February 27, 2014; September 8, 2014.

The applicant has submitted a motion to reopen and reconsider the dismissal of his appeal. Counsel asserts that the applicant has demonstrated extreme hardship to his lawful permanent resident mother and father if his waiver application is denied.

In support of the applicant's motion, the applicant resubmitted supporting documentation and prior briefs, background information concerning the applicant's mother's medical issues, updated medical documentation, background country conditions for Mexico, a letter from the applicant, background information concerning family dynamics and financial documentation. The entire record was reviewed and considered in rendering a decision on the motion.

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 (other than a purely political offense) 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 [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

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

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 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

The AAO previously determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, based upon his convictions for crimes involving moral turpitude. As noted, the applicant's crimes involving moral turpitude include two convictions for forgery of an official seal pursuant to section 472 of the California Penal Code on July 21, 1999. The applicant was also convicted of a theft offense on November 19, 2008, pursuant to section 484(a) of the California Penal Code.

The applicant does not dispute this ground of inadmissibility on motion.

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

(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.

Section 212(i) of the Act provides:

(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 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 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...

The record reflects that the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, signed and dated by the applicant on June 26, 1999. In response to the query as to whether the applicant has ever been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations, the applicant marked, "No." As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or misrepresentation.

The applicant does not dispute this ground of inadmissibility on motion.

Section 212(i) and 212(h) waivers of the bar to admission resulting from section 212(a)(6)(C) and section 212(a)(2)(A)(i)(I) of the Act, respectively, are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent, or child in the case of a section 212(h) waiver. Hardship to the applicant is not considered in section 212(i) or section 212(h) waiver proceedings unless it causes hardship to a qualifying relative. In this case the applicant's lawful permanent resident mother and father are presented as the applicant's qualifying relative on motion. 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*, 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. 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 record reflects that the applicant is a 35-year-old native and citizen of Mexico. The applicant’s mother is a 55-year-old native of Mexico and lawful permanent resident of the United States. The applicant’s father is a 58-year-old native of Mexico and lawful permanent resident of the United States. The applicant is currently residing with his parents and other family members in [REDACTED] California.

On motion, counsel for the applicant asserts that the applicant’s mother is suffering from diabetes, hypertension and obesity, which must be considered to be serious and critical. Counsel relies upon background information concerning diabetes to indicate the possible effects of diabetes and asserts that the applicant’s mother suffers from fatigue and requires assurance and support. Counsel contends that the [REDACTED] score for the applicant’s mother in her psychological evaluation indicates her inability to carry out daily activities, which requires extensive assistance from members of her family. It is noted that 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). It is also noted that neither the applicant’s mother’s medical nor psychological documentation state that she suffers from fatigue or is unable to carry out activities of daily living.

Counsel asserts that the applicant is relied upon to care for his mother during the day, while his siblings are working. The applicant contends that he makes sure that his mother takes her insulin, manages his parents’ finances, and monitors his mother until he leaves for work.

The record contains updated medical records for the applicant's mother indicating that she manages her diabetes with oral medication and insulin and that she suffers no associated symptoms. There is no medical documentation concerning the extent to which the applicant's mother requires the assistance of her family members, including the applicant, in her treatment.

Counsel asserts that the applicant and his mother have a close bond and that she would worry about his general safety and discrimination based upon his homosexuality if he returned to Mexico. The record contains a travel warning for Mexico, including Jalisco, the applicant's place of birth. The Department of State's travel warning states that non-essential travel should be deferred to borders of Michoacán and Zacatecas and caution should be exercised in rural areas and secondary highways, particularly along the northern border. The warning, however, notes that it does not extend to travel on the principal highways of Jalisco or travel to Guadalajara and Puerto Vallarta. We previously considered a resubmitted psychological evaluation of the applicant's mother diagnosing her with major depressive disorder, recurrent, moderate, borderline severe and generalized anxiety disorder. We also previously noted that the 2012 Department of State Country Report for Human Rights Practices in Mexico states that the IACHR (Inter-American Commission on Human Rights) learned about and condemned the killings of 10 lesbian, gay, bisexual or transgender (LGBT) individuals throughout the year, which indicates a sharp decline from the numbers reported in the submitted article. Though discrimination based upon sexual orientation and gender identity was found to be prevalent, the discrimination was not characterized as violent and the report noted a growing acceptance of LGBT individuals.

Counsel asserts that the applicant's family is a Latino family in which each members plays a role and the applicant's father relies upon him to care for his mother. As noted, there is no indication from the applicant's mother's treating physicians concerning the extent to which her treatment extends beyond attending her appointments and taking her medication and, further, the extent to which she requires assistance. It was also previously noted that the applicant's adult siblings also reside with the applicant's parents.

It is acknowledged that separation from a child nearly always creates hardship for both parties, and the record establishes that the applicant's mother and father would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's mother or father would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that due to the applicant's mother's diabetes diagnosis, she needs the best health care, which she would find in the United States rather than Mexico. Counsel indicates that background information concerning diabetes in Mexico states that the majority of health institutions in Mexico are not prepared for diabetes. However, the same article states that the government in Mexico has reacted strongly with national initiatives to address the growing burden posed by diabetes, including a national program, improved guidelines and technology, and a system of primary health clinics with an interdisciplinary team. It is noted that the record indicates that the applicant's mother did not attend a medical appointment between August 2013 and March 2014, as she was in Mexico. There is no indication that the applicant's mother was unable to maintain her medication while out of the country.

On motion, counsel asserts that the applicant's father would suffer financial hardship upon accompanying the applicant to Mexico, as he would not receive equivalent pay in Mexico for the work he does in the United States. Counsel further contends that the applicant's father owns two properties, a rental property that is a source of income and a property that currently houses his family members, and could lose these properties upon relocation. The record contains W-2 forms for the applicant's father and tax records for the applicant's siblings. The supporting documentation indicates that the applicant's father is employed in the United States. There is insufficient evidence that the applicant's father would discontinue his rental property profits upon relocation or that he would be unable to maintain his financial interest in his family's home.

The record is insufficient to determine that the hardships faced by the applicant's mother or father, in the aggregate, would rise to the level of extreme hardship if they relocated to Mexico.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

We therefore find that the applicant has failed to establish extreme hardship to his lawful permanent resident parents as required under sections 212(i) and 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is affirmed.