



U.S. Citizenship
and Immigration
Services

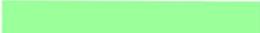
(b)(6)



DATE: **SEP 08 2014**

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 and second motion to reopen. This matter is now before the AAO on a third 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.

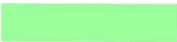
The Field Office Director concluded that the record failed to establish the existence of extreme hardship to a qualifying relative upon separation and denied the application accordingly. *See Decision of the Field Office Director* dated September 3, 2008. On appeal, the AAO also determined that the applicant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

The applicant has submitted a motion to reconsider the dismissal of his appeal. A motion to reconsider must be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy and establish that the decision was incorrect based on the evidence of record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On the applicant's motion, counsel for the applicant cites *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) to support the assertion that the entire range of factors concerning hardship must be considered in their totality. Counsel asserts that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and that he 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 and a business card. 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 appeal.

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." Counsel for the applicant again asserts that this misrepresentation of the applicant's criminal history was not based upon an attempt to conceal information. Counsel contends that the applicant's representative made an error in filling out the application, which was overlooked by the applicant. The burden is on the applicant to demonstrate by a preponderance of the evidence that he was unaware of the false representations in his application. See Section 291 of the Act, 8 U.S.C. § 1361. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a benefit under the Act. 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.

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 again asserts that the applicant's mother would suffer emotional and medical hardship upon separation from the applicant. 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 previously addressed that there is no supporting documentation for the evaluator's statement that the loss of the applicant's income would leave his mother with no place to live. Though counsel previously stated that the applicant's siblings, who also reside with the applicant's mother, are married with children, there is no indication that she would be unable to rely upon her other children for assistance. As noted previously, the applicant's mother's medical records indicated that she was accompanied to her medical appointments by her daughter on several occasions.

Further, the applicant submitted a business card from a restaurant and counsel asserts that the applicant is employed full-time as a waiter. There is no contention that the applicant's mother relies upon the applicant's income and no further supporting documentation concerning his employment. It is noted, however, that the applicant, as a full-time employee, also possesses responsibilities that affect his availability to provide any necessary assistance to his mother.

The record contains resubmitted medical prescriptions for the applicant's mother, a physician's letter stating that she is being treated for diabetes and obesity, and medical notes. As noted previously, there is no indication from the applicant's mother's treating physicians concerning the extent to which the her treatment extends beyond attending her appointments and taking her medication and, further, the extent to which she requires assistance.

Counsel for the applicant previously asserted that the applicant is a homosexual so that his mother would fear for his safety upon his return to Mexico, based upon his sexual orientation. The psychological evaluation of the applicant's mother also stated that she worries that the applicant would lack the skills and street smarts to keep himself safe in Mexico and would be concerned that he has no future in that country. We 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 acknowledges that the discrimination against members of the LGBT is not violent, but asserts that the overall condition in Mexico is volatile, so that the applicant's mother will continue to fear for the applicant's safety in Mexico.

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 though the applicant's mother is leaving behind three siblings in Mexico to reside in the United States, she would leave behind her husband, three children, her mother, and other extended family if she returned to Mexico. Counsel contends that if one chose between separation from a child or sibling, one would probably choose to be separated from a sibling. Counsel further asserts that the applicant's mother's separation from her spouse and children would impact her stability and ability to function. 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). Further, if the applicant's mother relocated to Mexico with the applicant, she would be accompanying one of her children. It was previously noted that the record does not contain any assertions from the applicant's mother concerning hardship she would suffer upon separation from her spouse, but that her psychological evaluation stated that she was the victim of spousal domestic violence. It was also previously noted that though the applicant's mother's psychological evaluation states that the applicant's mother is the main financial provider for her own mother, there is no supporting documentation indicating that the applicant's mother is employed or providing her mother with financial support.

On motion, counsel for the applicant references a previously submitted brief, which 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 and that his family members rely upon his income in the United States. Counsel further contends that the applicant's father owns two properties, a rental property and a property that currently houses his family members, and would lose these properties if he were no longer a lawful permanent resident of the United States. It is noted that the applicant's siblings are not qualifying relatives in the context of this application and the record does not contain updated tax returns for any of the residents of the household indicating their respective incomes or contributions to the household and bills.

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.