



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUN 22 2015**

FILE: [Redacted]
APPLICATION RECEIPT: [Redacted]

IN RE: Applicant: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno Field Office, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure a visa, other documentation, or admission into the United States, or other benefit provided under the Act. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and is applying for a waiver of inadmissibility in order to reside in the United States with her lawful resident spouse and U.S. citizen children.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 28, 2014.

On appeal the applicant asserts that the field office director's decision is erroneous and that she has met her burden of proving eligibility. With the appeal the applicant submits a statement and country information for Mexico. The record contains statements from the applicant, her spouse, her children and other family members; medical information for the applicant's spouse; a psychological evaluation of the applicant's spouse; country information for Mexico; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering this decision.

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 –

....

(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 record reflects that the applicant was convicted on [REDACTED] 2000, in Superior Court of California, [REDACTED] of Obtaining Aid By Fraud in violation of California Welfare and Institutions Code sections 11483/10980, for which she was given a conditional sentence of 36 months, 100 hours of community service, and a \$200 fine. The further record reflects that the applicant had previously been convicted of violating the same sections of law on [REDACTED] 1991, for which she had been sentenced to a conditional sentence of three years and 40 hours of community service.

Crimes involving fraud are considered to be crimes involving moral turpitude. *Jordan v. DeGeorge*, 341 U.S. 223, 227-32 (1951); *McNaughton v. INS*, 612 F.2d 457, 459 (9th Cir. 1980) (“A crime having as an element the intent to defraud clearly is one involving moral turpitude.”). In *Matter of Cortez*, 25 I&N Dec. 301, 308 (BIA 2010), the Board of Immigration Appeals held that a misdemeanor conviction for welfare fraud in violation of section 10980(c)(2) of the California Welfare and Institutions Code was for a crime involving moral turpitude, rendering an applicant ineligible for cancellation of removal. Here we find that the crime for which the applicant was convicted constitutes a crime involving moral turpitude, and the applicant does not contest her inadmissibility on appeal.

The record further reflects that on [REDACTED] 1998, the applicant was convicted of child endangerment in violation of California Penal Code section 273a, and was sentenced to 270 days in jail, fined, and ordered to attend anger management and parenting classes and to obey all directives and orders with regard to contact with her children.

The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, which provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1)The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that at an August 21, 2001, interview for an adjustment of status application the applicant failed to disclose her convictions. In response to a subsequent request for evidence about her convictions the applicant explained in a statement dated March 14, 2002, that she had forgotten some arrests and thought that the cases that had been dismissed were as if they had never occurred. At an interview for another application to adjust status, conducted on October 27, 2009, the applicant again failed to disclose her convictions. The field office director thus found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure a visa, other documentation, or admission into the United States or other benefit provided under this Act. On appeal the applicant does not contest the finding, although she states that she did not understand the questions and did not intentionally fail to disclose her criminal history.

Although the applicant's children are qualifying relatives for a waiver under section 212(h), the applicant requires a waiver under section 212(i) due to her inadmissibility under section 212(a)(6)(C)(i) of the Act, for attempting to procure an immigration benefit through fraud or misrepresentation in the United States. For this waiver the only qualifying relative is the applicant's spouse, for whom extreme hardship must be established.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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-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 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998). (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal the applicant states that she and the applicant have been domestic partners for more than 30 years. She states that her spouse is profoundly sick and lists various physical and mental health issues from which he suffers, and she asserts that he depends on her for support and medical treatment. She further asserts that it cannot be assumed that their children will provide the care and support that her spouse requires and that letters from the children do not indicate they can devote the necessary time to their father.

A letter from the spouse’s physician, dated March, 13, 2014, indicates that the spouse has been treated since 2011 for medical and psychiatric problems including chronic bronchitis, allergy rhinitis, asthma, lower back pain with degenerative joint disease, muscle spasms, hypertension, hyperlipidemia, and problems related to a job injury in 1996. It also indicates that the applicant’s spouse suffers major depression, post-traumatic stress, insomnia, and anxiety, and that his health condition is poor and permanent.

A psychological evaluation of the applicant’s spouse dated February 12, 2014, states that a long absence from the applicant would likely cause significant health and psychiatric repercussions. It

diagnoses the spouse with major depressive disorder and chronic pain syndrome and states that he suffers from insomnia, migraine headaches, and constant lower back and foot pain. The evaluation states that the applicant's spouse has a history of trauma and chronic pain that needs constant medical care and that he takes strong medication. The evaluation states that the spouse suffers Post-Traumatic Stress Disorder from a 1996 tractor accident and that by 2002 he was medically disabled due to the chronic pain, which has caused depression and anxiety. The evaluation states that the spouse cannot remember to take medication so the applicant organizes his medications and recalls appointments for him. The evaluation describes the spouse as unable to relax and unfocused and states that he is dejected and feels punished by life. It further states that he can only rely on the applicant because the children are now out of the house.

The letter from the spouse's physician and the psychological evaluation reflect that the applicant's spouse has several medical and mental health concerns, but the record does not support that he would suffer extreme hardship due to separation from the applicant. Although the psychological report indicates that the applicant provides care for her spouse, statements from the applicant, her spouse, and other family members do not indicate that the applicant provides daily support that the spouse could not otherwise receive. The statements submitted focus primarily on hardship to the spouse if he were to relocate to Mexico rather than daily hardship he would face if he remains in the United States. Documents in the record and letters from family members indicate that they live near the applicant's spouse, spend a great of time with him, and offer help. We acknowledge the hardship that typically results from separation from a spouse, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

The applicant asserts that letters from the children do not indicate they can devote the necessary financial assets to their father. However, other than the spouse's social security payment documentation, no additional financial information has been submitted to the record concerning the spouse's current expenses, liabilities, or overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse would experience financial hardship. In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

We find, however, that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. In their statements the applicant and her spouse assert that the spouse has medical and psychological problems for which he will not be able to access the medical care he needs in Mexico. The psychological evaluation states that in Mexico the spouse would be unable to afford medication that is provided in the United States. The applicant asserts that there is no real universal health care program in Mexico, and that people with lesser income or who do not reside in major cities have less access to medical care, some of which is inadequate.

In their statements the applicant and her spouse state the spouse is disabled, that their only income is from the spouse's social security benefits, and that they have no savings and no home in Mexico,

where her spouse has not lived for 30 years. The applicant notes that her spouse has been a lawful permanent resident of the United States since 1986, and that if he makes frequent, protracted trips or is living in Mexico permanently he will lose his lawful permanent resident status as it will be deemed abandoned, and he will then lose his social security disability benefits for not maintaining a legal immigration status. We note that a lengthy departure from the United States could cause the applicant's spouse to lose his U.S. lawful permanent resident status. See section 223 of the Act, 8 U.S.C. § 1203.

The applicant's spouse states that he has nine children and stepchildren, 19 grandchildren, and three great grandchildren in the United States and that the family gets together most weekends, so he would suffer if separated from them. The applicant further states that her children would suffer if they were to reside in Mexico because six of them have never lived there and three came to the United States when they were very young, they have no employment history or homes there, and their homes and jobs are in the United States, where they have spouses and children.

The applicant asserts that country condition reports show Mexico would be dangerous for her spouse because of his disabilities and cites human rights reports of people with mental disabilities being subjected to cruel treatment. The applicant also cites travel advisories indicating that crime and violence pervade Mexico. She submits a U.S. Department of State Country Reports on Human Rights Practices for 2013 for Mexico showing widespread human rights abuses in mental health institutions, and indicating that medical care in remote areas is limited. She also submits a news article about health care in Mexico that notes a lack of medication is a frequent complaint and that in poor states quality is still lacking.

A U.S. Department of State travel warning notes the risk of traveling to certain places in Mexico due to threats to safety and security posed by criminal groups and that crime and violence are serious problems and can occur anywhere. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico*, May 5, 2015. The record indicates that the applicant is from Michoacán state, where the Department of State recommends deferring non-essential travel. It notes that attacks on Mexican government officials, law enforcement and military personnel, and other incidents of organized crime-related violence, have occurred throughout the state and that armed groups maintain roadblocks, are suspicious of outsiders, and should be considered volatile.

The record establishes that the applicant's spouse became a lawful permanent resident of the United States in 1986. By relocating he would have to leave his extended family and medical care providers and would be concerned about his health and safety as well as his financial well-being given his age, medical condition, and receipt of social security benefits as his only income. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme

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hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a 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.

ORDER: The appeal is dismissed.