



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF E-M-R-

DATE: SEPT. 3, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, 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 crimes involving moral turpitude. *See* section 212(h) of the Act, 8 U.S.C. § 1182(h). The Field Office Director, Los Angeles Field Office, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. The Applicant appealed this decision to the Administrative Appeals Office (AAO). The appeal was dismissed and the matter is now before the AAO on a motion to reconsider. The motion will be denied.

In a decision dated May 9, 2013, the Director found that the Applicant did not demonstrate that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility to the United States. The application was denied accordingly.

On appeal, the Applicant asserted that the Director erred in not clarifying why the Applicant needed to request a waiver, in failing to apply the relevant law concerning extreme hardship, and in failing to consider all relevant evidence and their reasonable inferences presented in support of an extreme hardship waiver. The Applicant stated that her case was similar to that of the Applicant in *Matter of O-J-O*, I&N Dec. 381 (BIA 1996), that she is suffering more extreme hardship than the Applicant in that case, and her waiver application should be approved.

In our decision dated October 1, 2014, we found that the record did not establish that the Applicant's spouse or son would suffer extreme hardship as a result of the Applicant's inadmissibility.

On motion, the Applicant requests that we reconsider our decision based on an error of law, because we did not consider the hardship in her case in the aggregate. With her motion to reconsider, the Applicant submits additional documentation, including: a 2013 U.S. State Department Human Rights Report for Mexico, financial documents, medical documents, and five letters from friends attesting to her character and family hardships.

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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The Applicant's motion does not meet the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), as it does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, the Applicant does not contest the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Thus, we will not discuss the matter further.

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

(h) The Attorney General [now Secretary of Homeland Security (Secretary)] 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 [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 . . . .

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The Applicant's qualifying relatives are her U.S. citizen spouse and son. 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-Morales*, 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 v. I.N.S.*, 138 F.3d 1292 (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 record of hardship included: a declaration from the Applicant's spouse, financial documents, employment documents, a psychological evaluation, medical and educational documentation for the Applicant's son, country-conditions information, documentation evidencing community ties in the United States, and evidence of extended family ties in the United States.

On motion, the Applicant submits the following documentation of hardship: a 2013 U.S. State Department Human Rights Report for Mexico, financial documents, medical documents, and five letters from friends attesting to her character and family hardships.

We affirm our previous finding that the record does not support the Applicant's spouse's or son's claims of extreme hardship. In the Applicant's motion to reconsider, she does not address the deficiencies in the record of hardship discussed in our decision dismissing the appeal.

In our appeal decision, we indicated that although the Applicant's spouse had long-term employment in the United States and community and familial ties in California, he had not shown that relocation to Mexico would result in hardship rising to the level of extreme. The Applicant's spouse, as a member of the plasterers union, is a skilled laborer and has not shown that he would be unable to find employment in Mexico. Furthermore, as we stated in our previous decision, the record does not indicate the area of Mexico where the Applicant and her family would relocate. Given the varying degrees of development and crime Mexico experiences in different regions, not identifying the area of relocation makes evaluating the hardship they would face upon relocation difficult. Similarly, the record does not establish that the Applicant's son would suffer extreme hardship as a result of relocation. The record does not indicate that in Mexico the Applicant's spouse would be unable to support the Applicant and their son, that their son would be unable to receive a college education, or that the family would not have access to health care in Mexico.

The Applicant states that her son has glaucoma but does not submit documentation establishing this diagnosis. We recognize that the record includes a letter, dated March 15, 2011, from an eye doctor, stating that during a visual field test the Applicant's son was suspected of having glaucoma. The letter does not indicate that the Applicant's son was diagnosed with glaucoma. The letter states that the Applicant's son should return in 6 to 12 months for a follow-up visit. The record does not show that any follow-up tests or treatment occurred. The record on motion indicates that the Applicant's son has been seen by his primary care physician for a regular check-up, but it does not indicate any potentially serious medical problems, like glaucoma. Thus, the record does not support the assertions made regarding the Applicant's son's medical condition.

In regards to separation, the Applicant's spouse and son state that they would suffer emotional and financial hardship. A psychological evaluation in the record indicates that the Applicant's spouse is suffering severe anxiety and depression as a result of his wife's situation. The Applicant's spouse states that he cannot concentrate at work and has suffered minor injuries as a result. The record does not include documentation to support these assertions. The record includes a letter from the Applicant's spouse's employer, which does not mention any injuries occurring at work due to lack of his ability to concentrate. The Applicant's spouse also states that he will suffer financially if the Applicant is removed from the United States, because he cannot support two households. The record on motion indicates that the Applicant contributes to the household income through babysitting and that the Applicant's spouse takes medication, although the record is unclear about what this medication is meant to treat. These documents do not provide the detail necessary to make a finding of extreme hardship. The record does not indicate that the Applicant would be unable to support herself in Mexico, thereby increasing the financial burden on her spouse and, as stated previously, there is no record of the Applicant's spouse having problems at work. The record also lacks detail and specificity regarding the effects the Applicant's spouse's anxiety and depression are having on his life.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility

to the level of extreme hardship. We therefore find that the record indicates that the Applicant has not established extreme hardship to her U.S. citizen spouse or child as required under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, the motion will be denied.

**ORDER:** The motion is denied.

Cite as *Matter of E-M-R-*, ID# 10579 (AAO Sept. 3, 2015)