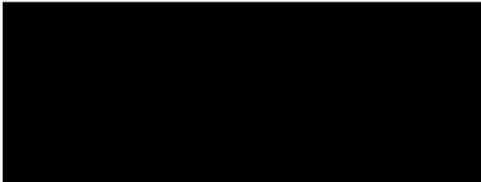


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H4



DATE: OCT 24 2012

OFFICE: MONTERREY

FILE: 

IN RE:

APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii).

ON BEHALF OF APPLICANT:

SELF REPRESENTED

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,

*for* 

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application and application for permission to reapply for admission were denied by the Field Office Director, Monterrey, Mexico, and are now before the Administrative Appeals Office (AAO) on appeal. The appeals will be dismissed.

The applicant, a native and citizen of Mexico, attempted to procure entry to the United States in January 2000 by claiming to be lawful permanent resident of the United States and using another name. Consequently, he was removed from the United States. The field office director found the applicant 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 having attempted to procure entry to the United States by fraud or willful misrepresentation.<sup>1</sup> The record also shows the applicant admitted to entering the United States without inspection yearly from 1993 to 2000, remaining from about March until November each year. The record further shows the applicant was apprehended and voluntarily returned to Mexico on four occasions in 1999. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and permission to reapply for admission under section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii), in order to reside in the United States with his lawful permanent resident spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 1, 2011. In the same decision, the Field Office Director denied the Application for Permission to Reapply for Admission (Form I-212) as a matter of discretion.

In support of the appeal, the applicant submits a statement from his spouse about the hardship she faces due his inadmissibility and psychological evaluations of his spouse and children. The entire record was reviewed and considered in rendering this decision.

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)]

---

<sup>1</sup> The decision of the field office director also indicates that the applicant was found to be inadmissible under Section 212(a)(6)(C)(ii) of the Act for having falsely claimed to be a U.S. Citizen when he sought admission in January 2000, but the decision later states that the applicant claimed to be a lawful permanent resident, not a citizen. A Record of Sworn Statement given by the applicant at the time he was apprehended as well as other documentation also indicates he claimed to be a permanent resident who had lost his permanent resident card.

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...

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. The applicant's wife is the only qualifying relative 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-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*, 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.

On appeal the applicant’s spouse states that without the applicant being able to return to the United States she is facing financial difficulties in supporting their family and she and their children are suffering psychological problems. The applicant submits psychological evaluation results on his spouse and children conducted in Mexico. The psychological evaluation of the applicant’s spouse indicates that she worries about the applicant, needing his care and attention, and that the situation reduces the quality time she spends with the children. Previously-submitted statements from the applicant’s spouse also assert financial and emotional problems due to the applicant’s absence. The record includes earlier statements from relatives attesting to the hardship of the applicant’s spouse and children.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant submitted letters from the qualifying spouse indicating that she experiences emotional hardship as a result of her separation from the applicant and a psychological evaluation showing general results of worry and feelings of depression, but does not provide any further detail or supporting evidence explaining the exact nature of the qualifying spouse’s emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. The applicant has also not established that his spouse would be unable to travel to Mexico on a regular basis to visit him, as the record suggests she has traveled to Mexico, given the birth of two children since the applicant’s removal from the United States and that the psychological evaluations were performed in Mexico.

As for the financial hardship referenced, the applicant submitted no documentation other than previously-submitted income tax information for his spouse in 2006 and 2007. The record indicates that the applicant has been employed in Mexico since November 2000. *See Form G-325A, Biographic Information*. It has not been established that the applicant is unable to support himself while in Mexico, nor has any documentation been submitted establishing the applicant's spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been addressed.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

The record shows that the applicant accumulated more than one year of unlawful presence in the United State in two periods of eight months, triggering ineligibility under section 212(a)(9)(C)(i)(I) after he entered the United States without inspection in 1999, again remaining about eight months. As such, he is inadmissible under section 212(a)(9)(C) of the Act and must request permission to reapply for admission.<sup>2</sup>

Section 212(a)(9)(C) of the Act states:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

---

<sup>2</sup> In January 2000 the applicant attempted to enter the United States using false documentation, and was expeditiously removed on January 30, 2000. He was inadmissible under section 212(a)(9)(A) for a period of five years after his removal, but is no longer inadmissible under the section of the Act.

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1) , section 240 , or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.-Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

Ten years have now passed since the applicant was removed from the United States in January 2000 and the applicant is now eligible to seek permission to reapply under Section 212(a)(9)(C)(ii) of the Act. However, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and the AAO has found the applicant is not eligible for a waiver for this ground of inadmissibility. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under (212)(a)(6)(C)(i) of the Act and his waiver application has been denied, no purpose would be served in adjudicating his application for permission to reapply for admission.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act and permission to reapply for admission, 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.