



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 18 2013** OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE:

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 section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) 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:



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 Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was found to be inadmissible to the United States pursuant to 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 an immigration benefit by fraud or willful misrepresentation. The applicant was also found to be inadmissible pursuant to 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States and section 212(a)(9)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(C)(i)(I) for having entered the United States without admission after unlawful presence in the United States for an aggregate period of more than one year. The applicant seeks a waiver of inadmissibility and permission to reapply for admission into the United States under section 212(a)(9)(A)(iii), 8 U.S.C. §§ 1182(a)(9)(A)(iii) in order to reside in the United States with her U.S. citizen spouse and children.

The Director concluded that the applicant is, in addition to other grounds of inadmissibility, inadmissible to the United States pursuant to section 212(a)(9)(C)(i) of the Act, as an alien unlawfully present after previous immigration violations, and denied the application accordingly. *See Decision of the Director*, dated January 9, 2013.

On appeal, counsel for the applicant asserts that the denial of the applicant's inadmissibility waiver due to her inadmissibility under section 212(a)(9)(C)(i) of the Act is an abuse of discretion. Counsel further appeals the applicant's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act and the denial of the applicant's waiver.

In support of the waiver application and appeal, the applicant submitted identity documents, a letter from the applicant, an affidavit from the applicant's spouse, letters of support, and financial documentation. 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)] 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 Director found that the applicant misrepresented her intent in an attempt to acquire a border crossing card. The record reflects that the applicant applied for a non-immigrant visa on December 30, 1992, stating that she wished to visit her relatives for a two-week visit. The applicant further stated that she was a student who had never visited the United States. However, on January 5, 1993, in secondary inspection, the applicant admitted that she had been living and working in the United States, without authorization, since 1990. The applicant asserts that she never misrepresented her intent. The applicant has failed to satisfy her burden of proof and demonstrate that she is not subject to inadmissibility under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring an immigration benefit through fraud or misrepresentation.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant is a native and citizen of Mexico who claims to have entered the United States without admission or parole in 1989. The applicant also claims to have remained in the United

States until her departure in January 2012. However, the record indicates that the applicant departed and reentered the United States prior to her January 2012 departure date. The record reflects that applicant accrued over one year of unlawful presence in the United States and the applicant does not dispute this ground of inadmissibility on appeal. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9) of the Act states in pertinent part:

....

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

(i) In general.-Any alien who-

(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 has consented to the alien's reapplying for admission.

The applicant claims to have entered the United States without admission or parole in 1989. The applicant also claims to have remained in the United States until her departure in January 2012. However, the record indicates that the applicant was physically present in Mexico in 2002, when she was denied a border crossing card. As such, the applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until her departure prior to 2002. The applicant subsequently entered the United States, again without admission or parole. Accordingly, the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act for entering the United States without admission or parole subsequent to unlawful presence for an aggregate period of more than one year.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than ten years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). To avoid inadmissibility under section 212(a)(9)(C) of the

Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States *and* USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant departed the United States in January 2012. As such, the applicant has remained outside the United States for less than ten years since her last departure. Based upon this ground of inadmissibility, the applicant is currently statutorily ineligible to apply for permission to reapply for admission.

Even if the applicant were eligible to apply for a waiver of inadmissibility, she has not demonstrated that the denial of her application would result in extreme hardship to a qualifying relative upon both separation and relocation. A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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. The applicant's spouse 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 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.

The record reflects that the applicant is a 42 year-old native and citizen of Mexico. The applicant’s spouse is a 42 year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico and her spouse and children are residing in Tracy, California.

The applicant’s spouse asserts that he would deeply miss his wife and children if he were separated from them. It is noted that a letter from the applicant’s spouse reflects that the applicant’s children are still residing in the United States with the applicant’s spouse. The applicant’s spouse also asserts that his son is not doing well in school, which he attributed to the applicant’s immigration issues. It is noted that the applicant’s children are not qualifying relatives in the context of this application so that any hardship they suffer would be considered only insofar as it affects the applicant’s spouse. It is also noted that the record does not contain any supporting documentation concerning the applicant’s son’s education.

The applicant’s spouse also asserts that the applicant does not have medical insurance in Mexico and that he fears for her safety in that country. The record reflects that the applicant is residing in Guanajuato, Mexico, the city of residence for her parents. There is no indication that the applicant has been unable to receive medical attention, as needed, and it is further noted that the

U.S. Department of State issued a travel warning for Mexico, dated July 12, 2013. There is no advisory in effect for Guanajuato.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse is suffering 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 spouse would suffer extreme hardship upon separation from the applicant. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

The applicant's spouse asserts that he cannot relocate to Mexico because he has created a life in the United States for himself and his family. It is noted that the applicant's spouse is a native of Mexico. It is also noted that the applicant's spouse's parents are residing in the United States and the applicant's spouse has been residing in the United States for over 20 years. The record contains a letter from the applicant's spouse's employer indicating that the applicant's spouse is currently a supervisor with [REDACTED] and has been an employee since March 1, 1993.

The applicant's spouse asserts that he has acquired further ties and benefits in the United States during his residence. The record indicates that the applicant's spouse purchased a home in 1998, owns two vehicles, and his family is currently covered by [REDACTED]. The record also contains letters of support for the applicant's spouse, including a letter from his church indicating membership since August 16, 2002. The applicant's spouse contends that residing Mexico would drastically limit his financial opportunities and the educational opportunities of his children. The applicant's spouse also asserts that his family would be exposed to the violence and crime of Mexico upon relocation.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Mexico. The record, however, 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 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 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 the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) and section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion. Further, based upon the applicant's inadmissibility pursuant to section 212(a)(9)(C)(i)(I) of the Act, she is currently statutorily ineligible to apply for permission to reapply for admission, and no purpose would be served in granting a waiver of inadmissibility.

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.