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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

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DATE: DEC 02 2011

Office: CHICAGO, IL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Mexico who 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 having obtained an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the child of Lawful Permanent Residents (LPRs) of the United States, and the mother of three adult U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 9, 2009.

On appeal, counsel asserts that the evidence of record is sufficient to establish extreme hardship to the applicant's LPR parents, as well as her children. *Form I-290B, Notice of Appeal or Motion*, dated July 8, 2009; *see also counsel's brief*.

The record includes, but is not limited to, counsel's brief; statements from the applicant and her son; medical records relating to the applicant's mother and father; psychological evaluations of the applicant's son; an Individualized Education Program (IEP) relating to the applicant's son; and a letter from the applicant's son's employer. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) of the Act 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.

The record reflects that at the time of her adjustment interview, the applicant testified that she had entered the United States on September 14, 1979, using a passport belonging to another person. In that the applicant obtained admission to the United States with a passport and visa belonging to another person, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having procured an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact.

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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel asserts that denial of the applicant’s waiver request would result in emotional, physical and financial hardship for her LPR parents. Counsel states that the applicant’s parents rely on the applicant for physical and emotional support, including transportation to their doctor appointments and translating for them at these visits. Counsel also contends that the applicant’s son, suffers from cognitive and emotional problems, that his ability to interact with young adults his age is severely hampered, that he has difficulties communicating with people of the opposite sex, and that he has had problems maintaining steady employment. Counsel states that the applicant provides her son with financial and emotional support and that her removal would result in hardship to her son, which in turn would result in hardship for her parents as they would have to witness their grandson’s struggle without the applicant’s support. Counsel notes that at their age and with their health problems, the applicant’s parents would not be able to provide the necessary support to their grandson.

In her February 21, 2007 statement, the applicant states that her elderly father suffers from lung and colon cancer, that he has had a lung removed, that he underwent chemotherapy and radiation and that he is still under the care of his doctors. She indicates that she takes her father to the doctor and also takes care of him at home. She also states that it will be extremely hard for her father to face his illness without her help in taking him to his doctors and in dealing with the side effects caused by his chemotherapy and radiation treatment and his medicines. The applicant further asserts that she provides both her parents with assistance on a daily basis, helping them with their baths, their medications and cooking. In a separate February 21, 2007 statement, the applicant asserts that her mother has had bilateral knee replacement on both knees; that she suffers from a deformation on her toes and from severe arthritis; and

that it is extremely hard for her to go up and down the stairs, lift groceries or walk without assistance. The applicant states that it would be extremely hard for her mother to live without her assistance.

In another February 21, 2007 statement, the applicant asserts that her son suffers from attention deficit and comprehension problems; that he has behavioral irregularities, which affect his normal every-day life; that he cannot keep a job; and that he is unable to make logical and responsible decisions. The applicant states that her son is seeing a clinical psychotherapist to help him understand his condition. The applicant indicates that she provides him with guidance and support, and that he will suffer extreme hardship if she is removed from the United States as he will not have anyone to provide him with the support he needs to deal with his deficiencies.

The AAO acknowledges the hardship claims concerning the applicant's parent's physical dependence on the applicant as a result of their health problems. However, although the applicant has submitted medical records from 2002 and 2003 that indicate that her father was diagnosed with lung and colon cancer, the record contains no medical evidence that establishes how his health problems affect his ability to function independently or the type or extent of the assistance he requires. The record offers no evidence that demonstrates that the applicant's mother suffers from the health conditions identified by the applicant in her February 21, 2007 statement. The record does include a January 12, 2007, letter from [REDACTED] which states that the applicant should be allowed to come with her father to appointments so that she can translate for him and help him understand his medical therapy, and a medical note from the [REDACTED] dated January 8, 2007, that indicates that the applicant was bringing her mother to a doctor visit on that day, which indicate some involvement of the applicant in her parents' health care. We also note that in her 2006 sworn statement, the applicant indicated that while her parents have medical needs, she is not helping them in any way. Her attestation that she visits her parents two or three times a week also appears to contradict her 2007 claim that her parents require her assistance on a daily basis.

On appeal, counsel notes the conflicting statements but does not provide an explanation beyond stating that the adjustment interview is "a particularly daunting experience." He contends that as her 2006 statement provides information that contradicts her application and statement from [REDACTED] it should be given little weight. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* We further note that in her 2006 statement, the applicant indicated that she has two brothers, one a United States citizen and the other a LPR. The record does not contain any evidence to demonstrate that the applicant's brothers would be unable or unwilling to assist their parents in the applicant's absence.

The AAO also notes the claim made by counsel regarding the impact of separation on the applicant's cognitively-impaired son and its indirect emotional impact on his grandparents whose age and health would prevent them from assisting their grandson. We acknowledge the evaluations prepared by the applicant's son's school psychologist and social worker which indicate that he had cognitive disabilities and was placed in an Individualized Education Program while in high school. The AAO also

acknowledges the letter prepared by licensed clinical professional counselor, [REDACTED] relating to the applicant's son's health. In her evaluation, [REDACTED] confirmed the findings from the applicant's son's former school that he has a cognitive disorder. She observes that he is immature for his age, that he has difficulty relating to young adults, that he has been unsuccessful in establishing a relationship with a young woman due to his immaturity, which has had a significant impact on his self-esteem. [REDACTED] indicates that the applicant's son had difficulty finding and maintaining consistent employment, and that he depends on the applicant for financial and emotional support. [REDACTED] contends that his financial and emotional dependence on the applicant is vital to his continued function in his community and requests that the applicant be permitted to remain in the United States to continue to provide her son with needed financial and emotional support.

The AAO finds the preceding evidence sufficient to demonstrate that the applicant's son would experience hardship in his mother's absence. However, we note that children are not qualifying relatives under section 212(i) of the Act. Any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's parents. Here, the record lacks any evidence to show that the burden of the applicant's son's care and support would fall on his grandparents, the only qualifying relatives in this case.

On appeal, counsel claims that the applicant's parents would experience both emotional and financial hardship in the applicant's absence, but the record fails to offer evidence in support of either claim. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Moreover, in her 2006 statement, the applicant specifically stated that she was not providing her parents with any financial support. Also, in the same 2006 statement the applicant stated that she has two brothers, a USC and an LPR, but there is nothing in the record that indicates why they would not be able to support their parents if necessary.

Accordingly, based on our review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's parents would experience extreme hardship if the waiver application is denied and they continue to reside in the United States without the applicant.

The applicant has not addressed the hardships that her parents would face if they returned to Mexico to live with her. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships if any her parents would encounter in Mexico. Therefore the record does not demonstrate that the applicant's parents would experience hardship upon relocation to Mexico.

Accordingly, the AAO finds that the record does not contain sufficient evidence to establish the applicant's eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found her statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant.

See 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.