

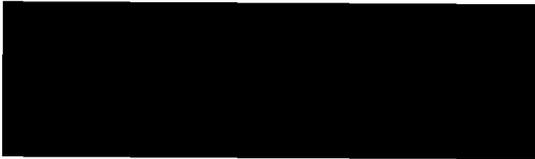
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: DEC 02 2011 OFFICE: MEXICO CITY (CIUDAD JUAREZ)



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)

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 District Director in Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In sworn statement, the applicant admitted she is a citizen of Mexico who, on March 11, 2003, presented a non-resident border crossing card which belonged to another person to an immigration official in an attempt to gain admission and enter into the United States. The applicant, then using the name [REDACTED] was placed into expedited removal proceedings as an arriving alien, and was found 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 sought to procure admission to the United States through fraud or misrepresentation. The applicant was further found to be inadmissible to the United States for a period of five (5) years from the date of her departure given that she was ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States. Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). On March 11, 2003, the applicant was ordered removed, and her departure was verified.

The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative.¹ An I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal was filed on August 13, 2007; however, given that more than five years had elapsed since the applicant was removed from the United States, the I-212 waiver was no longer required. *See Decision of District Director*, August 19, 2008. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to obtain an immigrant visa and join her U.S. Citizen husband in the United States.

The District Director concluded the applicant failed to establish that her qualifying relative would undergo extreme hardship through her continued inadmissibility and denied the application accordingly. *See Decision of District Director* dated August 19, 2008.

On appeal, counsel for the applicant asserts that the District Director ignores the applicant's spouse's physical, psychological, and other hardship, including hardship experienced by the spouse because of separation from his autistic son. *Brief in support of appeal*, October 18, 2008. Counsel further asserts that the Ninth Circuit Court of Appeals has jurisdiction over this case, and that the District Director did not give sufficient weight to family separation, especially when such "separation will lead to psychological and emotional hardships." *Brief in support of appeal*, October 18, 2008.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

¹ The applicant began using the name [REDACTED] at this point without identifying her previous alias, [REDACTED]. In a response to a request for evidence, the applicant clarified her name at birth was [REDACTED] but her current, married name is [REDACTED].

(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, in pertinent part:

- (1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the applicant admitted in a sworn statement that she presented a border crossing card which did not belong to her to immigration officials in an attempt to gain admission into the United States, knowing that it was against the law to attempt to enter in that manner. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen spouse.

Section 212(i) 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. 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*, 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*, 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.

It is noted that counsel states "this case arises" within the jurisdiction of the United States Court of Appeals for the Ninth Circuit and consequently asserts that the AAO should follow precedent from the Ninth Circuit, specifically regarding consideration of separation from family. *Brief in support of appeal*, October 18, 2008. As explained above the AAO considers the totality of the circumstances, including separation from family, in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's child [REDACTED] would experience if the waiver application were denied. It is noted that Congress did not include

hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The record includes, but is not limited to, the attorney's brief in support of appeal, two declarations from the applicant's spouse, dated July 14, 2007 and October 18, 2008, a copy of the certificate of naturalization for the applicant's spouse, two Consular Reports of Birth Abroad of a Citizen of the United States for children [REDACTED] a letter from [REDACTED] dated August 8, 2007, a note from [REDACTED] dated July 10, 2007, records related to expedited removal proceeds including the Order of Removal dated March 11, 2003, and the applicant's sworn statement dated March 11, 2003.² The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel claims that "psychological and emotional hardships suffered by [the applicant's spouse] rise to the level of extreme hardship." *Brief in support of appeal*, October 18, 2008. In support, the applicant's spouse states he is "extremely depressed over the fact that [his] wife has been required to remain in Mexico while [he] must remain working in the United States." *Second Declaration of* [REDACTED] October 18, 2008. The applicant's spouse then asserts "it causes [him] tremendous emotional grief on a daily basis when [he] realize[s] that because of [his] wife's inability to come to the United States, [his] son is going without the best special education that he needs to help him cope with his autism." *Id.* Additionally, counsel indicates the applicant's spouse suffers hardship "which is way out of the ordinary" because he "suffers from being unable to spend more time helping his autistic son in Mexico." *Brief in support of appeal*, October 18, 2008. A physician opines the applicant's son suffers from "important behavior and language problems, hyperactivity and restlessness, low social contact, and evident autistic attitudes." *Letter from* [REDACTED] August 8, 2007. As a result, the son was "sent to behavioral and language therapy... and has shown improvement." *Id.* Going forward, the physician recommends "irregular behavior modification, Occupational therapy, alternate Activities, and Language therapy, looking for positive changes, to continue with global stimulation, and offer or modify Medical treatment according to his response." *Id.*

Counsel also contends the applicant's spouse has a "medical problem as a result of separation from his wife." *Brief in support of appeal*, October 18, 2008. In support, the applicant submits a physician's note, which indicates the applicant's spouse "suffers from a skin condition non infectious-contagious, but with a psychological background that affects him [in] emotional and stress situations, and family problems." *Note from* [REDACTED] dated July 10, 2007.

² The record also contains documents titled "Registro Civil," "Registro Civil Acta de Nacimiento," "Registro Civil - Acta de Matrimonio," and documents titled "Centro de atencion al nino autista de Mexicali." These documents are not translated into English and certified, as required by 8 C.F.R. § 103.2(b)(3). Therefore, they cannot be considered in adjudicating this appeal.

The applicant's spouse additionally describes financial hardships he experiences as a result of separation from the applicant. He claims: "not only must I pay for the school in Mexico, I must also pay rent on a house in Mexico where my wife and children are living, while also paying rent here in the United States." *Second Declaration of* [REDACTED], dated October 18, 2008. The spouse explains he "occasionally [works] up to 12 hours per day installing alarms." *Id.* He further states that he sends "what money [he] can to Mexico to provide for [his] family." The applicant's spouse visits his wife and child "every weekend as [he] is able to." *First Declaration of* [REDACTED] July 14, 2007. He explains the applicant "is a housewife. She has no capable skills that would enable her to earn a livelihood in Mexico," except skills that accompany training "as a beautician." *Id.*

Despite the claims of depression and emotional grief made by the applicant's spouse, there is insufficient evidence to show what he is experiencing is beyond what is experienced by others in similar situations. With respect to the spouse's medical condition, the record lacks documentation from a medical services provider describing the spouse's complete medical condition or supporting documentation to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. All that is in the record is a physician's note about an unnamed "skin condition" which affects the applicant in "emotional and stress situations." *Note from* [REDACTED] dated July 10, 2007. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

Counsel asserts that the applicant's spouse "suffers from being unable to spend more time helping his autistic son, and also because his son must stay with his mother in Mexico, where available services for autistic children are inferior." *Brief in support of appeal*, October 18, 2008. However, insofar as the applicant alleges that the son is receiving insufficient or inferior medical treatment and services in Mexico and requires the applicant's spouse for help, the evidence is actually to the contrary. The physician in Mexico shows the son was "sent to behavioral and language therapy... and has shown improvement." *See Letter from* [REDACTED] August 8, 2007. Additionally, the applicant's spouse asserts he is "paying \$130 per week to have [his son] treated at a special school for autistic children in Mexicali, Mexico," although "the schools here are of a much better quality." *Declaration of* [REDACTED] [REDACTED] October 18, 2008. This assertion is not supported by any evidence in the record. Moreover, although the applicant's spouse explains he cannot bring his son back to the United States with him because "it would cause him to be separated from his mother," as a U.S. Citizen his son is eligible to live in the United States and may benefit from services available here. *Id.*

The applicant's spouse contends "this whole situation" is causing him to suffer "financial difficulties" in that he must "pay for the school in Mexico... rent on a house in Mexico where [his] wife and children are living, while also paying rent in the United States." *Declaration of* [REDACTED] [REDACTED] October 18, 2008. The record does not contain any evidence of the spouse's employment, income, or household expenses to support these assertions. The applicant further fails to provide any evidence regarding her own employment and earnings, and whether she would

be able to contribute financially if she could join her spouse in the United States. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The AAO recognizes family separation as a factor in determining extreme hardship and has reviewed the record for evidence that would establish the impact separation would have on the applicant's spouse. While the AAO acknowledges the applicant's spouse faces difficulty as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the emotional distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and he remains in the United States.

Lastly, no assertion is made regarding whether the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico, nor is there any evidence on this matter. In fact, the record contains evidence that the applicant's spouse was born in Mexico, and that he is "very much alone in the United States." *Second declaration of* [REDACTED] July 14, 2007. The record also lacks argument and evidence regarding country conditions in Mexico, specifically regarding the area where the family would reside, related to a finding of extreme hardship. Accordingly, the AAO finds that there is insufficient evidence to find extreme hardship to the applicant's U.S. Citizen spouse upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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) of the Act. 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 proceedings for a waiver of grounds of inadmissibility under section 212(i) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.