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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: JUL 15 2011 Office: PORTLAND, OR

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).

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 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, Portland, Oregon. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who used a false document in an attempt to enter the United States. 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). She is the wife of a lawful permanent resident (LPR) and has two U.S. citizen daughters. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her [REDACTED], and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 9, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director failed to accord proper weight to submitted evidence, failed to fully consider the hardship impacts on the applicant's spouse and that the record establishes the applicant's qualifying relative spouse will experience extreme hardship. *Brief in Support of Appeal*, received April 9, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented the border crossing card of another individual in an attempt to enter the United States in 1995, and thus attempted to enter the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; a statement from the applicant; a statement from the applicant's two daughters; a statement from the applicant's spouse's son from a previous relationship; letters from the applicant's spouse's employer; letters from friends and associates of the applicant and her spouse attesting to their moral character and the impacts of separation; school records for the applicant's daughters; medical documents pertaining to the applicant's oldest daughter; financial documents submitted with a Form I-864 and copy of a residential deed; country conditions materials; copies of news periodicals on the conditions in Mexico, including drug violence, economic policies, crime, education, pollution and civil rights; photographs of the applicant, her husband and their daughters.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (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.

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 the applicant or her children 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 Pitch* 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 counsel for the applicant asserts the applicant’s spouse will experience physical, emotional and financial hardship due to the applicant’s inadmissibility. Counsel contends that, upon relocation to Mexico, the applicant’s spouse would experience financial and physical hardship. *Brief in Support of Appeal*, received on April 9, 2009. He explains that the applicant’s spouse is 59 years old, would not be able to find adequate employment to support his family in Mexico, has no family ties in Mexico, has strong family and community ties in the United States and would experience extreme hardship due to the violent conditions in Mexico. He further states that the applicant’s daughters have been raised in the United States and that acculturating them to Mexico would result in a hardship to the applicant’s spouse. Counsel also explains that one of the applicant’s daughters has asthma and would not have access to adequate medical care in Mexico.

The applicant’s spouse has submitted a statement which includes the assertions made by counsel.

Counsel notes that the conditions in Mexico would result in extreme hardship to the applicant’s spouse and their daughters. He refers to the U.S. State Department’s Country Report on Human Rights Practices for Mexico, as well as other general reports and news periodicals on the socio-

political and environmental conditions in Mexico. While these materials may be reflective of the lower standard of living in Mexico, they do not establish that the applicant's qualifying relative will experience an uncommon hardship factor upon relocation to the country. In this case the qualifying relative is from Mexico, can speak the language and is familiar with the culture. There is no evidence that the applicant, her spouse or their daughters would be residing in an area impacted by the drug war violence or that they would be specific targets of crime. Barring any circumstance which may distinguish the impacts on the qualifying relative the lower standard of living or difference in cultural standards in Mexico do not establish an uncommon hardship impact. Most qualifying relatives who relocate abroad with their inadmissible family members will experience a decrease in their standard of living and acculturation impacts. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); see also *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996)(discussing acculturation impacts).

The record does contain some hospital records pertaining to the applicant's daughters. These records appear to have been generated when the applicant's daughters were taken to the hospital for routine, non-life-threatening illnesses. The AAO notes, as discussed above, that children are not qualifying relatives in these proceedings, as such, any hardship impact to them is only relevant as it impacts the qualifying relative, in this case the applicant's spouse. Although the evidence in this case indicates the applicant's daughters have visited the hospital for routine illnesses, there is insufficient evidence of the nature or severity of the applicant's daughters' medical conditions or that the applicant's daughters would be unable to receive treatment in Mexico for this or other medical conditions. Therefore, the record does not establish that the daughters' medical conditions create a hardship for the applicant's spouse.

The AAO will take into account the fact that the applicant's spouse has resided in the United States for thirty years, that he is 59 years of age, that he has no family contacts in Mexico and has established family and community ties in the United States. While these facts may result in some hardship to the applicant's spouse if he were to relocate to Mexico, even when considered in aggregate they fail to establish that he would experience impacts which rise to the level of extreme.

Counsel has also asserted that the applicant's spouse would experience emotional, physical and financial hardship if he and their daughters remained in the United States. *Brief in Support of Appeal*, received on April 9, 2009. Counsel explains that the applicant's spouse would have to assume additional parenting duties, that he would suffer heightened emotional hardship because his own mother died at a young age, and that his daughters would experience emotional hardship because they need their mother. Counsel asserts the applicant provides child care for their children, and that without her being present the applicant's spouse would have to pay for child care. In addition, the applicant's spouse asserts he would have to assume the costs of telephone calls, trips to Mexico to see his spouse and he would be unable to find a second job he would need to support two households and pay for childcare.

An examination of the record reveals little evidence in support of these assertions. There is a brief letter from the applicant's spouse's employer which states that the applicant's employment position is not part-time and that it would not accommodate frequent travel. There is no documentation,

however, of the applicant's spouse's current financial obligations. There is no indication that he would not be able to find affordable childcare for his children. The AAO notes that the record contains evidence that the applicant's spouse has family members which reside near him, and it has not been explained why they would be unable to assist in the care of his daughters in order to mitigate the impacts of the applicant's departure. *See MCHD Triage Note*, August 25, 2004 (indicating that a cousin was providing care for the applicant's daughter and called the hospital in order to seek medical attention); *see also letter from Niece*, dated November 23, 2008 (stating that she resides near the applicant's spouse). Based on this evidence the AAO cannot determine that the financial impact of the applicant's departure would rise above the normal financial impact associate with the removal of a family member.

With regard to the emotional impact of departure, the AAO would first note that the applicant's children are not qualifying relatives; as such any hardship to them is only relevant to the extent that it creates hardship for a qualifying relative, the applicant's spouse. There is nothing in the record which indicates the applicant's children would experience emotional hardship which, in turn, would create hardship for the applicant's spouse. Counsel has asserted that the applicant's spouse spent 10 years in an orphanage when his mother died at a young age and his aunts were abusive, and that these facts add to the emotional hardship that the applicant's spouse would experience if the applicant were removed. There is no documentation in the record from a mental health professional which states that the applicant's spouse's early childhood experience has significantly impacted his life or continues to impact him emotionally at this age. Beyond the assertions of counsel and the applicant's spouse there is no objective documentation of any emotional hardship which allows the AAO to draw a distinction from the emotional hardship he would experience from that typically experienced by the relatives of inadmissible aliens. While statements from friends and family attest to the emotional bonds of the family, the AAO has no objective basis to conclude that these bonds are greater than the bonds that typically exist among families.

The record also fails to establish that the applicant's children suffer from any serious medical conditions. While the record contains printouts from their visits to the hospital for routine illnesses, there is nothing which indicates that either daughter has special medical needs or special educational needs.

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 husband faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse may suffer emotionally as a result of separation from the applicant. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant

statutorily ineligible for relief. no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.