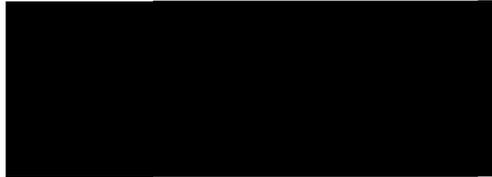


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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, N.W. MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



**PUBLIC COPY**



HS

FILE: [REDACTED]

Office: CIUDAD JUAREZ

Date:

JUL 27 2011

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:

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 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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, the applicant's husband asserts that he is suffering physically, emotionally, and financially due to the long separation from his wife. He states that he has high blood pressure, insomnia, chronic pain in his whole body, and feels disoriented and confused from lack of sleep. The applicant's husband conveys that he met his wife in Mexico and married her there on December 19, 1985. He declares that he has lived in the United States since 1985, when he was 23 years old, and that his wife arrived in the United States on November 4, 1989, and lived here with him until December 1991. He states that he wanted his wife to immigrate here, and they consulted an attorney, who took their money, gave them a social security card, and a green card "that resulted to be fake." The applicant's husband states, "My wife found out when she tried to re-entry [sic] to the United States after we took a vacation to Mexico." He indicates that they have been together for more than 25 years, that he misses her, and that he cannot maintain two households (his in the United States and his wife's in Mexico) or afford to visit her in Mexico.

In addition, the applicant's husband conveys that most of his family members live in the United States. He states that in his hometown in Mexico he would not be able to find a job with comparable wages and benefits to what he now has. He avers that there are jobs in "the agriculture field and the even if I am lucky enough to find a job, I would not be able to earn enough money to support my family." The applicant's husband declares that, "I am proud to have a job in the United States since February 12, 1985. I am making good money to maintain a modest life style." He states that he could not earn a wage sufficient to support his family in Mexico and would have to live in poverty, without basic necessities and medical care. Moreover, the applicant's husband expresses his concern about his family's safety if he lived in Mexico due to the violence and crime in Mexico and because he will be targeted as having money since he is from the United States. Finally, the applicant's husband avers that he will suffer severe emotional distress in Mexico because he has lived in the United States for 25 years and enjoys his lifestyle, and has family and friends here, and would be depressed in having to give this up to live in poverty in Mexico.

The applicant's wife is inadmissible for seeking admission into the United States by fraud or willful misrepresentation. 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.

U.S. Citizenship and Immigration Service (USCIS) records show that on November 23, 1992, the applicant sought to gain admission into the United States at the port of entry in Laredo, Texas, as a passenger in a vehicle, by presenting a counterfeit I-551 in her name, which she bought for \$2,000 in California.

USCIS records further show that the applicant was convicted of attempting to enter the United States by a willful false or mislead representation or willful concealment of a material fact, in violation of Title 8, United States Code, Section 1325(a)(3), and was placed on probation without supervision for three years, with the special condition that she not return or attempt to return to the United States illegally.

Based on the record, we find the applicant is inadmissible under section 212(a)(6)(C) of the Act for attempting to procure admission into the United States based on the willful misrepresentation of the material fact of her identity and eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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.

In rendering this decision, the AAO will consider all of the evidence in the record, which consists of letters by the applicant's husband and by a doctor, and other documentation.

We note that the letter by the doctor dated October 24, 2007 does not have an English language translation. The regulation at 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In that the October 24 letter is written completely in Spanish and has no translation, the letter will carry no weight in this proceeding.

The record shows that the applicant married his wife on December 19, 1985. The applicant's husband naturalized on June 16, 2004, and he filed the Form I-130, Petition for Alien Relative, on his wife's behalf on August 15, 2005. Further, the record shows that the applicant has lived in Mexico since 1992 and her husband has lived in the United States.

The asserted hardships in the instant case are emotional and financial in nature. The applicant's husband indicates that he has been together with his wife for 25 years. However, the record shows that since 1992 the applicant has been living in Mexico while her husband has lived in the United States, and the applicant has not fully demonstrated that they have maintained a close relationship despite their separation of 25 years. In addition, the applicant has provided no documentation showing that her husband financially supports her and that he cannot afford to do so. Thus, when these hardship factors are considered together, we find that they fail to demonstrate that the applicant's husband would experience extreme hardship if he remains in the United States without his wife.

Furthermore, the applicant has not demonstrated that her husband would experience extreme hardship if he joined her to live in Mexico. The applicant's husband indicates that he will be separated from his family members in the United States if he lived in Mexico. The applicant's husband, however, provided no documentation showing that his family members are here legally. The applicant's husband asserts that he will not find a comparable job in terms of salary and benefits to what he now has for which he is qualified, and that he will live in poverty. However, the applicant's husband submitted no documentation of his present employment in the United States and of the economic conditions in his and his wife's hometown in Mexico. The applicant's husband submitted no documentation of his health problems. The applicant's husband expresses concern about crime and violence in Mexico, but he provided no documentation that such crime and violence exists in his and his wife's hometown. Thus, we find that when the hardship factors and the submitted evidence in support them are considered together, they are insufficient to establish extreme hardship to the applicant's husband.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.