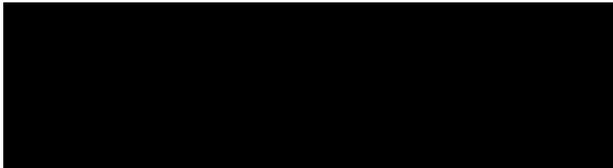


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



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DATE: **MAY 19 2011**

Office: MEXICO CITY

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:

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The record establishes that the applicant, a native and citizen of Mexico, procured entry to the United States in 2003 by presenting a fraudulent laser visa. He was thus 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 procured entry to the United States by fraud or willful misrepresentation.¹ The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen step-father and lawful permanent resident mother.

The district director concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The district director further noted that the negative factors outweighed any positive factors in the applicant's case. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the District Director*, dated December 22, 2008.

In support of the appeal, the applicant submits the following: a brief; evidence of the applicant's mother's lawful permanent resident status; and a declaration from the applicant's mother, dated January 23, 2009. 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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

¹ The district director, in his decision, further noted that the applicant had failed to disclose to a consular officer a second entry to the United States without inspection and subsequent apprehension by the U.S. Border Patrol. *See Decision of the District Director*, dated December 22, 2008. The district director concluded that the failure to disclose his entry without inspection and subsequent apprehension also showed fraud or willful misrepresentation with respect to immigrant visa issuance. On appeal, the applicant contends that he only entered the United States one time by presenting a fraudulent laser visa purchased through a coyote. *Appeal Brief*. As the AAO has already determined that the applicant is subject to section 212(a)(6)(C)(i) of the Act for his fraud or willful misrepresentation in procuring entry to the United States in 2003 by presenting a fraudulent laser visa, as outlined in detail above, it is not necessary to evaluate whether the omissions referenced by the district director also amount to misrepresentation under section 212(a)(6)(C)(i) of the Act.

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 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.

To begin, on appeal the applicant explains that he was only 17 years old at the time he paid a coyote to guide him into the United States. He notes that he had never seen a border crossing card and was unaware that it was fraudulent. The applicant thus contends that his actions were not willful and/or meaningful and he should not be found to be inadmissible under section 212(a)(6)(C)(i) of the Act. *Supra* at 2.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established by a preponderance of the evidence that the applicant did not willfully misrepresent himself to obtain entry to the United States. The applicant claims that he had never seen a border crossing card and could not have known of the falsity of the document. The AAO notes that the applicant admits that he paid a coyote with "the purpose of being guided to gain illegal entrance to the United States...." *Supra* at 1. The applicant, although only 17 at the time, knew that what he

was doing was illegal, yet still proceeded in procuring entry to the United States with fraudulent documentation. Moreover, with respect to the assertion that the applicant made a timely retraction of his misrepresentation, the record does not establish that the applicant admitted the fraudulent use of a laser visa at first opportunity after procuring entry to the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As such, based on the evidence in the record, the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 U.S. citizen step-father and lawful permanent resident mother 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may

depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant’s U.S. citizen step-father asserts that he will suffer emotional hardship were he to remain in the United States while his step-son resides abroad due to his inadmissibility. In a declaration he states that he is very close to his step-son and would consequently experience hardship were his son to remain abroad, as being a father to the applicant has given him an additional sense of purpose in life. He notes that although his step-son was in the United States for the time he acted as witness in the federal case against the coyotes, for approximately two months, he has continued to act as a father to him from a distance. Further, the applicant’s step-father explains that his step-son suffers from obesity and needs to reside in the United States to receive proper and affordable medical treatment. Finally, the applicant’s step-father explains that were the applicant to remain abroad due to his inadmissibility, his wife may choose to relocate abroad to accompany her son and such an arrangement would cause him extreme hardship. *Declaration of* [REDACTED] dated September 17, 2007.

In support, a psychological evaluation has been provided outlining the hardship the applicant's step-father would experience were his wife to relocate abroad to reside with the applicant. *Psychological Evaluation of* [REDACTED] dated August 1, 2007. As the applicant and his step-father explain, this evaluation is an important document because by analogy, it can be applied to evaluate the emotional devastation that the applicant's step-father will suffer if the applicant is not granted a waiver. *Form I-601 Submission*, dated September 15, 2007.

The applicant's lawful permanent resident mother explains in a declaration that she has not had a chance to know her son very well due to their long-term separation and the short experience of living together for a few weeks in 2003 was the best in her life. She also addresses her son's obesity and the need for him to be with his mother and step-father in the United State to receive affordable and appropriate treatment. *Declaration of* [REDACTED] dated January 23, 2009.

With respect to the emotional hardship referenced, and as correctly noted in the record, the evaluation provided by [REDACTED] pertains to the hardships the applicant's step-father would experience were his wife to relocate abroad to reside with her son. However, the record contains no indication that the applicant's mother plans to relocate to Mexico to reside with her son due to his inadmissibility and thus, the evaluation does not address the hardships the applicant's step-father would experience were his step-son specifically to continue to reside abroad. Moreover, it has not been established that the applicant's step-father and/or mother are unable to travel to Mexico on a regular basis to visit the applicant. Further, although the applicant's step-father has provided a letter from his treating physician, [REDACTED] confirming that he suffers from hypertension, [REDACTED] notes that the medical condition is currently controlled by medication. No reference is made by [REDACTED] to the specific hardships the applicant's step-father will experience were his step-son to continue residing abroad. Finally, although the applicant's step-father and mother reference the applicant's obesity and the need for him to be treated by professionals in the United States, no letter has been provided from the applicant's treating physician outlining the medical diagnosis, the severity of the situation, the short and long-term treatment plan and what specific hardships the applicant, currently 26 years of age and gainfully employed.

The AAO recognizes that the applicant's step-father and mother will endure hardship as a result of long-term separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's parents' continued care and support require the applicant's physical presence in the United States. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen father and/or lawful permanent resident mother will experience extreme hardship were they to remain in the United States while the applicant resided abroad due to his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. This

critterion has not been addressed with respect to the applicant's lawful permanent resident mother. As such, it has not been established that the applicant's mother would experience extreme hardship were she to relocate to Mexico, her native country, to reside with the applicant due to his inadmissibility.

As for the applicant's step-father's hardships, he explains that joining the applicant in Mexico is not an option as he was born and raised in the United States and has no ties to Mexico. He further asserts that he will be unable to obtain gainful employment in Mexico to maintain his standard of living. Finally, the applicant's step-father explains that were he to relocate aboard, he would lose his medical insurance and would not be able to afford medical care and medications in Mexico. *Supra* at 2-3.

The record reflects that the applicant's step-father was born and raised in the United States. Were he to relocate abroad to reside with the applicant, he would have to adjust to a country with which he is not familiar. Moreover, the applicant's step-father would not be able to maintain his quality of living due to the substandard economy in Mexico.² Finally, the U.S. Department of State has issued a travel warning, advising U.S. citizens and lawful permanent residents of the high rates of crime and violence in Mexico. *Travel Warning-Mexico, U.S. Department of State*, dated April 22, 2011. It has thus been established that the applicant's step-father would suffer extreme hardship were he to relocate abroad to reside with the applicant due to his inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen step-father and/or lawful permanent resident mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's father's or mother's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's family's situation, the record does not establish that the hardships the applicant's step-father or mother would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

² As noted by the U.S. Department of State,

Poverty is widespread (around 44% of the population lives below the poverty line) and high rates of economic growth are needed to create legitimate economic opportunities for new entrants to the work force. The Mexican economy in 2009 experienced its deepest recession since the 1930s. Gross domestic product (GDP) contracted by 6.5%, driven by weaker exports to the United States; lower remittances and investment from abroad; a decline in oil revenues; and the impact of H1N1 influenza on tourism.

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. 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. The waiver application is denied.