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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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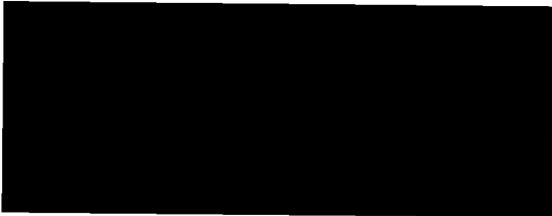
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IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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, Salt Lake City, Utah. The matter 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 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 attempting to enter the United States on January 6, 1996 using a fraudulent lawful permanent resident stamp in his passport. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his family.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated June 4, 2008. Thereafter, the applicant moved to reopen and reconsider his waiver application and also filed an Application for Permission to Reapply for Admission in to the United States After Deportation or Removal (Form I-212). The denial of his waiver application was affirmed and the Form I-212 was denied. *See Decision of the Field Office Director* dated June 2, 2009.

The applicant's attorney provided a brief in support of the applicant's appeal. In the brief, the applicant's attorney contends that the qualifying spouse will encounter financial and emotional hardships if the applicant is not granted a waiver. The applicant's attorney further asserts that the qualifying spouse will encounter hardships if she relocates Mexico because of her close family ties to the United States, her length of stay in the United States, possible separation from her son and potential financial losses.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs from the applicant's attorney, affidavits and letters from the applicant and qualifying relative, affidavits and letters from friends and family, a letter from the applicant's employer, financial documentation and other materials accompanying the Application to Register to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Section 212(i) of the Act provides:

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 an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's wife 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 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 applicant’s qualifying relative is his wife, a United States citizen. The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, briefs from the applicant’s attorney, affidavits and letters from the applicant and qualifying relative, affidavits and letters from friends and family, a letter from the applicant’s employer, financial documentation and other materials submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s attorney contends that the qualifying spouse will encounter financial and emotional hardships if the applicant is not granted a waiver. The applicant’s attorney further asserts that the qualifying spouse will encounter hardships if she relocates Mexico because of her close family ties to the United States, her length of stay in the United States, possible separation from her son and potential financial losses.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant’s attorney asserts that the qualifying spouse will suffer emotional and financial hardships should the applicant return to Mexico. In her affidavit, the qualifying spouse asserts that it would be “unbearable” for her to live her life without the applicant. She also explains that she grew up without her father, and that she doesn’t want her son to feel the same kind of pain that she felt. However, the qualifying spouse failed to provide any detail or supporting evidence concerning how the effects on her son of living without the applicant would affect her. She also states that her life would be incomplete and unhappy without the applicant, and letters from friends and family confirm that the applicant and the qualifying spouse share a strong bond. However, other than indicating that the applicant

and qualifying spouse have a very close and lengthy relationship, and that the qualifying spouse would experience sadness and pain, the record failed to provide sufficient detail to demonstrate the types of emotional hardships that the qualifying spouse would face if she remained in the United States without the applicant. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Further, the applicant's attorney contends that the qualifying spouse will face financial hardships without the financial assistance of the applicant. The record contains financial documentation, including expenses, tax returns, wage and tax statements and employer letters. However, the letter from the applicant's employer indicates that the applicant was laid off from his job in the spring of 2009 and there is no current financial documentation to demonstrate that the applicant is currently working. As such, it is unclear how the applicant's departure from the United States will contribute to the financial hardships of the qualifying spouse. As such, the applicant failed to provide sufficient evidence to establish that his qualifying spouse would suffer extreme hardship if he returns to Mexico.

However, the applicant has demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to Mexico with the applicant. The qualifying spouse's family ties to the United States include her son, parents, siblings, other relatives and friends, and letters from family and friends demonstrate that she is very close with her family and friends. Further, the qualifying spouse has lived in the United States for her entire life, has never lived in Mexico, has no apparent ties to Mexico and does not speak Spanish. The applicant's attorney also asserts that the qualifying spouse would face financial hardships if she relocated to Mexico. In her affidavit, the qualifying spouse indicated that she has completed more than half of the years she needs at her job to receive pension benefits. The record also contains proof of financial ties to the United States, such as a mortgage, two car loans and other expenses. The AAO therefore concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the qualifying spouse would suffer extreme hardship due to her family and financial ties to the United States, her length of residence in the United States, her lack of ties to Mexico, and her potential financial hardships if she relocated to Mexico.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 if she remains in the United States without the applicant. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying 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.

The AAO notes that the field office director denied the applicant's Form I-212 in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(i) of the Act no purpose would be served in granting the applicant's Form I-212.

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.