

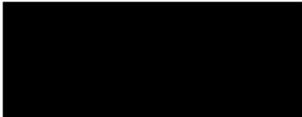
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship and Immigration Services



**PUBLIC COPY**

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Date: NOV 14 2011

Office: CHICAGO, ILLINOIS

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated June 25, 2009.

On appeal, counsel contends the applicant established extreme financial, emotional, familial, social, and medical hardship to her U.S. citizen husband and that the field office director failed to give proper weight to all of the evidence of hardship.<sup>1</sup>

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on April 8, 1999; an affidavit from the applicant; an affidavit from [REDACTED] a copy of the birth certificate of the couple's U.S. citizen son; a letter from [REDACTED] mother; a letter from the applicant's niece; numerous letters of support; a letter from the applicant's physician and copies of the applicant's medical records; employment verification for [REDACTED] and letters from his employer; copies of tax returns and other financial documents; copies of photographs of the applicant and her family; documents from the couple's son's school; a copy of the U.S. Department of State's Travel Alert for Mexico and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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<sup>1</sup> Although the Form I-290B and counsel's brief purport to appeal the denial of the applicant's Form I-485 as well as the denial of the applicant's Form I-601, the AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

(i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In this case, the record shows, and the applicant concedes, that she entered the United States in June 1999 using a border crossing card that belonged to someone else. *Affidavit of Eva Terrazas*, dated October 17, 2007. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 this case, the applicant’s husband, [REDACTED], states that he was born in Durango, Mexico, but has lived in the United States for thirty-six years, since he was seven years old. [REDACTED] states that he and his wife have a seven year old son together and that even though they have tried to have another child, his wife has had three miscarriages. He states he is constantly worried about his wife’s well-being and that the emotional hardship of losing three children has been overbearing. [REDACTED] claims he cannot care for his son without his wife’s presence because he works long hours. In addition, [REDACTED] claims he has been an emotional wreck since his wife’s waiver application was denied. He contends he has been very depressed, unable to eat or sleep, cannot focus at work, and experiences extreme anxiety and nervousness. Moreover, [REDACTED] contends he cannot move back to Mexico to be with his wife because he would have to leave his career as a railroad maintenance operator where he earns approximately \$47,000 per year. He states his wife is a homemaker and that he is the sole source

of financial support for the family. He contends he cannot leave his job because in addition to the salary, he is provided health insurance for his entire family, and contends he could not afford private health insurance in Mexico. Moreover, [REDACTED] states he would have to sell their home for a huge financial loss and that moving to Mexico would mean becoming financially destitute. He states that his entire immediate family lives in the United States and that he is very close to his family. [REDACTED] contends he fears he would be unable to assist his aging mother who suffers from health problems if he moved to Mexico. Furthermore, [REDACTED] fears that he and his son would be targets for kidnapping, ransom, and extortion attempts in Mexico because they are U.S. citizens. He worries about the swine flu pandemic and that his son would have difficulty adjusting to Mexico and have a lower quality of education in Mexico. *Affidavit of* [REDACTED], dated August 7, 2009; *Statement of* [REDACTED], dated October 26, 2006.

A letter from the applicant's physician states that the applicant has been evaluated for recurrent pregnancy loss and infertility. The physician referred her to a specialist for evaluation for in vitro fertilization. *Letter from* [REDACTED], dated July 22, 2009. The record contains copies of the applicant's medical records which show that she had miscarriages in August 2007 and August 2004.

A letter from [REDACTED] mother states that she is elderly. She states that her son and his wife, the applicant, give her companionship, help her buy groceries, and clean her house. She states that she loves her grandson very much, that he brings her much happiness, and that he occasionally sleeps over. *Letter from* [REDACTED], dated August 19, 2009.

A letter from the applicant's niece states that if the applicant is sent back to Mexico, it would affect the entire family. She states that it would be very dangerous for her uncle, [REDACTED], to be worried and stressed all the time about his wife and son in Mexico. She contends if the applicant returns to Mexico, the family would not be able to see her again because they do not travel to Mexico. *Letter from* [REDACTED], dated July 19, 2009.<sup>2</sup>

After a careful review of the record, the AAO finds that if [REDACTED] had to move to Mexico to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] has lived in the United States for thirty-six years, since he was seven years old. [REDACTED] entire family lives in the United States, including his seventy-six year old mother who is a lawful permanent resident and his nine year old U.S. citizen son. In addition, [REDACTED], the sole income earner for his family, would have to give up his employment if he moved back to Mexico. The AAO also acknowledges that the U.S. Department of State has issued a Travel Warning urging U.S. citizens to avoid non-essential travel to Durango, Mexico, where both the applicant and her husband were born, and where the applicant's

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<sup>2</sup> The record also contains several letters that are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services 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. Consequently, these documents cannot be considered.

parents continue to live. *Biographic Information form (Form G-325A)*, dated June 28, 2007; *U.S. Department of State, Travel Alert, Mexico*, dated April 22, 2011. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he had to move to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Regarding the financial hardship claim, there is insufficient evidence showing that [REDACTED] hardship will be extreme if he remains in the United States. According to the most recent tax documents in the record, [REDACTED] earned \$68,145 in wages in 2008. *2008 U.S. Individual Income Tax Return (Form 1040A)*, dated March 5, 2009. In addition, [REDACTED] submitted a Form I-864, affirming he would financially support the applicant based on his salary alone of \$52,636. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated June 28, 2007; *see also Form I-864*, dated March 2, 2006 (affirming he would financially support the applicant based on his salary of \$48,498). Moreover, neither the applicant nor her husband address the couple's regular, monthly expenses, such as rent or mortgage. To the extent [REDACTED] contends he has over \$13,000 in credit card debt, *Affidavit of [REDACTED] supra*, the record does not contain copies of his credit card bills and there is no evidence any of his accounts are in arrears. Although the AAO does not doubt that [REDACTED] will suffer some financial hardship, without more detailed information addressing the couple's total assets, monthly expenses, and debt, there is insufficient evidence in the record to determine the extent of his financial hardship. Furthermore, the AAO acknowledges the applicant's miscarriages and the couple's desire to conceive another child, and is sympathetic to the family's circumstances. Nonetheless, the record does not indicate any other medical conditions for either the applicant or her spouse. Similarly, the AAO acknowledges that friends and family contend [REDACTED] would be devastated if he stayed in the United States without his wife. *See, e.g., Letter from [REDACTED]*, dated July 20, 2009; *Letter from [REDACTED]*, dated July 19, 2009. However, considering these letters and all of the evidence in the aggregate, the record does not show that [REDACTED] hardship would be extreme or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Although the applicant has demonstrated that the qualifying relative, her husband, would experience extreme hardship if he 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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, the burden of proving eligibility remains entirely with the applicant. *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.