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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

[REDACTED]

H5

Date: OCT 05 2011

Office: CHICAGO, IL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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 children 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 May 1, 2009.

On appeal, counsel contends that the applicant established the requisite hardship. Specifically, counsel contends the field office director failed to adequately address the medical evidence in the record, failed to consider the applicant's husband's significant loss of his father when he was a child, improperly considered country conditions in Mexico, and failed to adequately consider the impact on the couple's three children, one of whom has a medical issue.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on February 10, 1995; copies of the birth certificates of the couple's three U.S. citizen children; an affidavit from [REDACTED] documents from the children's school; a psychological report; copies of the children's medical records; letters from [REDACTED] physician and copies of medical records; a copy of the U.S. Department of State Country Reports on Human Rights Practices for Mexico and other background materials; letters from [REDACTED] employer; copies of tax returns and other financial documents; copies of photographs of the applicant and her family; 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)(6)(C)(i) of the Act provides, in pertinent part:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i)

of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes, that she attempted to enter the United States in March of 1995 by using a relative's Alien Registration Card. The applicant further concedes that in July of 1995, she entered the United States using another individual's birth certificate, representing to immigration officials that she was born in the United States. *Record of Sworn Statement of [REDACTED]*, dated February 4, 2008; *see also Brief in Support of Respondent's I-290B Notice of Appeal*, undated. 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.¹

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 child 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, 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

¹ Although aliens making false claims to U.S. citizenship on or after September 30, 1996, are ineligible to apply for a Form I-601 waiver, *see* sections 212(a)(6)(C)(ii) and (iii) of the Act, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 permits aliens making false claims to U.S. citizenship prior to September 30, 1996, to apply for a waiver. *See Memorandum by Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, et al.*, dated March 3, 2009, at 24, 26. In the instant case, the applicant's false claim to citizenship occurred prior to September 30, 1996, and there is no indication in the record that the applicant continued to make false claims of citizenship after her entry into the United States. Therefore, the applicant is eligible to apply for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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 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 and the applicant have known each other since childhood because they lived in the same village in Mexico. [REDACTED] states that he and his wife have been married for more than thirteen years and have three children together, all of whom were born in the United States. According to [REDACTED], the couple’s twelve year old daughter, [REDACTED] cries and worries about the future and contends that she would die if her mother had to depart the United States. [REDACTED] states that [REDACTED] has had several surgeries on her chin and that he will not be able to afford any surgeries or treatment she may need in the future if his wife cannot remain in the United States to care for the children. In addition, [REDACTED] contends that the couple’s daughter, [REDACTED], suffers from frequent ear infections and has required two surgeries to implant tubes in her ears. [REDACTED] claims it would be difficult to continue treatment for [REDACTED] in Mexico. Furthermore, [REDACTED] states that if he and the children moved to Mexico, they would move to Andocutin, where his mother lives, which is a very poor village with few job opportunities. He contends he is unable to perform manual labor due to a back injury. *Affidavit of [REDACTED]* dated March 4, 2008.

A psychological report states that the applicant and [REDACTED] have known each other since childhood. According to the social worker, [REDACTED] mother and one brother remain in Mexico while seven of his other siblings live in the United States. The social worker states that [REDACTED] father died when [REDACTED] was sixteen years old. According to the social worker, “[h]is parent loss as a young adolescent suggests that the relationship with his wife is of very great significance for his psychological wellbeing.” [REDACTED] mother reportedly preferred life in Mexico and despite being a lawful permanent resident of the United States, returned to her village of [REDACTED] Mexico, where she continues to live. According to the social worker, [REDACTED] suffered a

work-related back injury in 2005 and despite undergoing surgery and two months of physical therapy, the surgeon purportedly concluded surgery was not successful in [REDACTED] case and he still suffers from pain. The social worker contends [REDACTED] was laid off from work and found a new employer in December 2007. In addition, the social worker states that the couple's daughter, [REDACTED] has been undergoing treatment for a congenital malformation of her chin for the last three years. The social worker states that [REDACTED] chin has been wired to move it forward and that she is scheduled for surgery in February 2008. Furthermore, the social worker states that the couple's younger daughter, [REDACTED] has a hearing impairment as a result of ear infections. The social worker contends [REDACTED] has had two surgeries to implant tubes in her ears and is being followed by a specialist. The social worker concludes that [REDACTED] is greatly at risk of developing depression if separated from his wife and that losing his father at a young age makes him more vulnerable to depression. The social worker also concludes that if the family moved to Mexico together and returned to Andocutin, an impoverished rural village where their standard of living would be drastically reduced, the children would lose the opportunities they have in the United States and would have to travel "some distance" to obtain the most basic level of health care. *Consultation and Evaluation Report*, dated February 29, 2008.

A letter from [REDACTED] physician states that [REDACTED] sustained an injury at work in August 2003 and a re-injury in September 2003. According to the physician, [REDACTED] injured his left leg and his back and MRIs indicated a disc herniation. The physician recommended surgery and cautioned [REDACTED] that he may experience reexacerbations of back pain given the long-lasting degenerative disc changes in his back. [REDACTED] had back surgery in February 2005 and has been in physical therapy. According to his physician, his current diagnosis is lumbar sprain/strain and his prognosis is good. *Letters from [REDACTED]*, dated November 16, 2005, October 19, 2005, July 12, 2005, June 21, 2005, May 10, 2005, March 30, 2005, March 2, 2005, November 30, 2004.

A letter from an orthodontist's office states that [REDACTED] is receiving orthodontic treatment. *Letter from [REDACTED]*, dated February 11, 2008. Copies of [REDACTED] medical records indicate she has recurrent middle ear effusions and conductive hearing loss, and that she had surgery in January 2006 as a result of her recurrent serous otitis media. An audiological record for [REDACTED] states that she has "normal hearing in both ears." *University of Illinois Medical Center, Audiological Record*, dated February 10, 2006.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] will suffer extreme hardship if his wife's waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the couple's U.S. citizen children and their medical issues, hardship to the applicant's children can be considered only insofar as it results in hardship to [REDACTED] the only qualifying relative in this case. There is insufficient evidence in the record to show that caring for his children as a single parent would cause extreme hardship to [REDACTED]. With respect to [REDACTED] purported surgeries on her chin to correct her jaw line, there is no evidence in the record to support this contention. Although the social worker describes this purported problem, as the social worker herself states, she met with the applicant and [REDACTED] one time on February 12, 2008, and never met their children, relying solely on the

parents' reported observations of the children. Similarly, although the record contains a letter from a Clinic Manager verifying that [REDACTED] has been a patient since August 2007, the letter states only that "[REDACTED] is currently receiving orthodontic treatment. . . ." *Letter from [REDACTED] supra.* There is no evidence in the record corroborating [REDACTED] contention that [REDACTED] has had any surgeries or that she has any problem with her jaw line that requires surgery. Likewise, with respect to [REDACTED] frequent ear infections, although the record contains copies of her medical records indicating that she had surgery in January 2006, there is no letter in plain language from any health care professional addressing the prognosis, treatment, or severity of her ear infections. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

To the extent [REDACTED] lost his father as an adolescent, and to the extent he and his children will suffer emotional hardship, the AAO is sympathetic to the family's circumstances. Nonetheless, the record does not show that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility of exclusion. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he were to return to Mexico to avoid the hardship of separation. The record shows that [REDACTED] is currently forty years old. The record further shows that he was born in Mexico and married the applicant in Mexico. Although the AAO recognizes [REDACTED] back problems may make it difficult for him to perform some aspects of manual labor, such as heavy lifting, the record shows that he has worked in the tree care business as an arborist since at least 1995 and has continued to do so despite his purported ongoing back pain. *Letter from [REDACTED]*, dated July 17, 2007 (stating [REDACTED] was an employee of The Care of Trees since May 1995); *see also Earnings Statements, [REDACTED]*, dated December 15, 2007 through January 31, 2008. There is no evidence in the record to support the contention that [REDACTED] would be unable to find employment in Mexico. In addition, although the AAO recognizes that [REDACTED] and the couple's children would need to adjust to living in Mexico, the record does not show that this hardship would be extreme or that his situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS, supra.* To the extent counsel addresses violence in Mexico, although the AAO recognizes that the U.S. Department of State has issued a Travel Warning addressing the dangers of traveling to and living in some areas in Mexico, *U.S. Department of State, Travel Alert, Mexico*, dated April 22, 2011, significantly, [REDACTED] himself does not address dangerous country conditions in his affidavit. Rather, [REDACTED] merely notes that his mother still lives in Andocutin, where both he and the applicant are from, and that "[i]t is a very poor village with few job opportunities." *Affidavit of [REDACTED], supra.* Considering all of the evidence in the aggregate, the record does not show that [REDACTED] relocation to Mexico would be any more difficult than would normally be expected under the circumstances.

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 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.