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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]

#5

Date: OCT 17 2011

Office: PHOENIX, ARIZONA

FILE: [REDACTED]

IN RE: Applicant: A [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:

[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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona, 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 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 presenting another person's Mexican passport containing a United States immigration admission stamp on February 10, 1997 at the San Ysidro, California port of entry. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130), submitted on her behalf by her United States citizen son. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her family.

In a decision dated January 11, 2011, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 11, 2011.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserts that the applicant's qualifying relative will suffer emotional, psychological and financial hardships should the applicant be returned to Mexico. Further, the applicant's attorney asserts that the applicant cares for their children and the qualifying spouse's mother, who is disabled and lives with them. Moreover, the attorney indicates that, should the qualifying spouse relocate to Mexico, he would face financial and safety concerns.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), letters from the qualifying spouse, a medical document regarding the qualifying spouse's mother, the applicant's birth certificate, a copy of the qualifying spouse's permanent resident card, a marriage certificate, letters from the applicant's children and their birth certificates, a letter from the applicant's sister and her naturalization certificate, reference letters written on behalf of the applicant, a statement from the qualifying spouse's mother written in English by the applicant's attorney, an appeal brief written on behalf of the applicant, country condition materials, a police clearance letter regarding the applicant and other documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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.

Section 212(i) of the Act provides that:

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 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).

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 [REDACTED]* 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 the present case, the record reflects that the applicant presented another person’s Mexican passport containing an admission for lawful residence stamp on February 10, 1997 at the San Ysidro, California port of entry in order to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through fraud or misrepresentation.

The applicant’s qualifying relative is her husband, who is a lawful permanent resident. The documentation provided that specifically relates to the qualifying spouse’s hardship includes letters from the qualifying spouse, a medical document regarding the qualifying spouse’s mother, letters from the applicant’s children and their birth certificates, a letter from the applicant’s sister, reference letters, a statement from the qualifying spouse’s mother written in English by the applicant’s attorney, an appeal brief written on behalf of the applicant, country condition materials and other documentation submitted in conjunction with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant’s attorney asserts that the applicant’s qualifying relative will suffer emotional, psychological and financial hardships should the applicant be returned to Mexico. Further, the applicant’s attorney asserts that the applicant cares for the qualifying spouse’s mother, who is disabled and supported by the qualifying spouse. Moreover, the attorney indicates that, should the qualifying spouse relocate to Mexico, he would face financial and safety concerns.

The applicant's attorney contends that the qualifying spouse will suffer financial, emotional and psychological hardships due to his separation from the applicant. With respect to the financial hardship, the applicant's spouse contends that he would not be able to work if the applicant were unable to provide care for his mother, which would result in financial difficulties. The record contains very little detail regarding the qualifying spouse's mother. In his most recent letter, the qualifying spouse indicates that the applicant takes care of his mother, that his mother lives with his family, that she has osteoporosis, and that her bones are "very [easy to fracture]." A medical document from a hospital in Sinaloa, Mexico was also submitted. It indicated that the qualifying spouse's mother is 85 years old, has osteoporosis and has been prescribed calcium. Further, the applicant's attorney provided a statement from the qualifying spouse's mother, wherein the qualifying spouse's mother states that she is unable to read or write in English or Spanish. However, the qualifying spouse's mother did not sign the document and the document was not certified. The statement of the qualifying spouse's mother indicates that the applicant takes her to her doctor's visits. However, there was no documentary evidence provided from any doctor in the United States substantiating the qualifying spouse's mother's medical issues or describing any treatment or assistance needed. Assertions made by the qualifying spouse's mother or counsel have been considered. However, assertions cannot be given great weight absent supporting evidence. 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)).

Moreover, the record does not contain any documentary proof of the qualifying spouse's current financial situation, such as tax returns or evidence of the family's expenses. However, there was a 2009 tax return filed by the applicant's son submitted with the Form I-485. The applicant's son named his three siblings, the qualifying spouse's children, as dependants. It is unclear why the qualifying spouse did not claim his own children as dependants or whether he earns sufficient income to support them. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant therefore has provided insufficient evidence to corroborate that he would suffer financial hardship if the applicant returned to Mexico without the qualifying spouse.

With respect to the qualifying spouse's emotional and psychological hardships, the record contains two letters from the qualifying spouse. In his letters, the qualifying spouse indicates that he "need[s] to be together" with the applicant and that the applicant's immigration issues are "affecting [his family] emotionally." He further states that he and his children are "stressed" and that it has been extremely hard for him to stay strong for his children. Although the distress caused by separation from one's spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. As such, the applicant has not met his burden in showing that the qualifying spouse would suffer extreme hardship if he remained in the United States without the applicant.

However, the applicant has demonstrated that her qualifying relative would suffer extreme hardship in the event that he relocated to Mexico with the applicant. The qualifying spouse has been living in the United States since 1998. Further, the qualifying spouse has family members living in the United States, including his children and his lawful permanent resident mother. The qualifying spouse would also lose his current employment in the United States and would face emotional hardships upon dealing with separation from his children, should he choose to relocate with the applicant. Further, the applicant's attorney asserts that the qualifying spouse would face safety issues upon relocation to Mexico. The record contains country condition information detailing the safety concerns in Mexico and letters from the applicant's sister and other relatives indicating that the family would live in Sinaloa, Mexico if they returned there. The most recent travel warning from the Department of State specifically urges United States citizens to avoid non-essential travel to Sinaloa due to the high level of violence in the area. Considered in the aggregate, the AAO concludes that, were the applicant's spouse to relocate to Mexico with the applicant, he would suffer extreme hardship due to his length of residence in the United States, ties to the United States, and the other effects of relocation to Mexico.

Although the applicant has demonstrated that her qualifying relative 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 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 upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility 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.

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.