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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

#5

Date: **SEP 08 2011**

Office: LOS ANGELES

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:

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, Los Angeles, California. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the AAO dismissal of the appeal will be upheld, and the underlying waiver application denied.

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 fraud or willful misrepresentation of a material fact in order to obtain 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 in the United States.

The district director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the District Director*, dated August 31, 2005. The AAO subsequently found that there was insufficient evidence showing that the applicant's situation is unique from most other individuals separated as a result of inadmissibility and that the applicant had not addressed whether relocating to Mexico would result in extreme hardship. *Decision of the AAO*, dated September 7, 2007.

In his motion, counsel contends that the denial of the waiver application is based on an incorrect application of section 212(a)(6)(C) of the Act. According to counsel, the applicant, who made a false claim to U.S. citizenship prior to the enactment the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") is not inadmissible because IIRIRA added false claims to U.S. citizenship as a new ground of inadmissibility. Relying on *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), counsel contends that section 212(a)(6)(C) of the Act cannot be applied retroactively and, therefore, the applicant is not inadmissible. Alternatively, counsel submits new, additional evidence of hardship.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In this case, the applicant has submitted new affidavits and documentary evidence to support his claim. In addition, counsel states reasons for reconsideration and has supported his contention with pertinent precedent decisions. Therefore, the motion to reopen and reconsider will be granted.

In addition to the documents summarized and evaluated in the AAO's previous decision, the record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on July 19, 2001; a declaration from the applicant; a copy of the emergency department admission; copies of medical bills; a copy

of a sonogram; and a copy of a check made out to the applicant. 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:

- (i) 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.
- (ii) Falsely claiming citizenship
 - (I) In general.—Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.
 - (II) Exception.—In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.
- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i) of this section.

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 applicant concedes that she entered the United States in 1986 from Mexico without inspection and remained until 1990. *Declaration of [REDACTED] in Support of Motions at ¶ 9,*

dated October 5, 2007. The applicant also concedes that she attempted to return to the United States using a fraudulent birth certificate showing she was born in the United States, but was detained and told to return to Mexico. *Id.* The applicant states that a few days later, she managed to enter the United States without using the birth certificate. *Id.*

Counsel contends that “[s]ection 212(a)(6)(C) does provide that an alien is inadmissible if such alien tried to obtain documentation or admission to the U.S. by fraud. However, it does *not* provide that a person making a false claim to U.S. citizenship to gain entry into the U.S. is inadmissible.” Counsel contends that in 1996, Congress added a ground of inadmissibility for an alien who falsely claims to be a U.S. citizen for any purpose or benefit under the Act or under any other federal or state law, but contends that this provision is not retroactive. According to counsel, because the applicant’s false claim of citizenship was made almost seven years before the enactment of IIRIRA, she is not inadmissible. *Brief in Support of Combined Motion to [Reopen] and Motion to Reconsider* at 6-8, dated October 8, 2007.

The AAO finds counsel’s contention that the applicant is not inadmissible to be unpersuasive. Prior to the enactment of IIRIRA, a false claim to U.S. citizenship was grounds for finding an alien inadmissible under section 212(a)(6)(C)(i) of the Act relating to fraud or willful misrepresentation of a material fact in certain cases. The fraud or material misrepresentation must have been made to procure a specific benefit under the Act, such as a visa, admission, or immigration document (*i.e.* a U.S. passport). The fraud or material misrepresentation must also have been made to a U.S. government official.

Section 212(a)(6)(C) of the Act includes two (2) separate grounds of inadmissibility that are based on past misrepresentations. Section 212(a)(6)(C)(i) of the Act applies to fraud or misrepresentations in general. Section 212(a)(6)(C)(ii) of the Act applies to any alien who, on or after September 30, 1996, makes a false claim to be a U.S. citizen. . . .

If an alien made a false claim to U.S. citizenship before September 30, 1996, that false claim may make the alien inadmissible under section 212(a)(6)(C)(i) of the Act rather than under section 212(a)(6)(C)(ii) of the Act. . . .

This distinction is critically important because individuals who made a false claim to U.S. citizenship before September 30, 1996 may have the possibility to apply for a waiver of the ground of inadmissibility under section 212(a)(6)(C)(i) of the Act. Individuals who made false claims to U.S. citizenship on or after September 30, 1996 have no waiver available.

Memorandum by Lori Scialabba, Associate Director, Refugee, Asylum & International Operations Directorate, et al., dated March 3, 2009 at 24, 26 (emphasis in original).

In this case, counsel concedes that [REDACTED] false claim of citizenship was made on December 25, 1990. . . .” *Brief in Support of Combined Motion to [Reopen] and Motion to Reconsider* at 6, dated October 8, 2007. The applicant’s false claim to U.S. citizenship, which occurred prior to September 30, 1996, was made to a U.S. Government official to gain admission into the United States. Thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit and is eligible for a waiver of inadmissibility. Significantly, the provision of IIRIRA which does not allow for a waiver of inadmissibility for a false claim to U.S. citizenship made on or after September 30, 1996, is not being applied retroactively to the applicant.

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 started working for the railroad company in 1970 and sustained a severe eye injury in 1973. He contends he received a lump sum settlement for his injury and has been receiving disability benefits since 1984. According to [REDACTED] the trauma to his eye continues to be a major disability. He states his eye never regained its vision and that he cannot drive, read, prepare his own meals, or walk around the house without bumping into things. He states he relies on his wife to give him his medicine because it is difficult for him to get it out of the bottle. He states he constantly spills a glass of water because it is hard for him to see. In addition, [REDACTED] states he was diagnosed with diabetes in 1998 and placed on a strict diet. He contends his wife regularly checks his blood sugar level and that his most recent hospitalization for hypoglycemia was on September 26, 2007. [REDACTED] states his wife has been caring for him and preparing his meals, and that he cannot afford to hire a nurse to help him. Moreover, [REDACTED] states that he has been diagnosed with prostate cancer and that it needs to be treated aggressively. According to [REDACTED], he is now totally disabled and is highly dependent on his wife to take care of him. Furthermore, [REDACTED] contends that his monthly income of \$1,684 does not cover his monthly expenses which total over \$2,400 and that he relies on his wife's income or workers compensation check to cover his expenses. He states he is sixty-two years old, his children do not visit him, and, therefore, he does not have any other family members to help him with his various medical problems. He states that he has been living with the applicant since 1994 and that he would suffer emotionally, physically, medically, and financially if his wife departed the United States. [REDACTED] also contends that he does not think he will receive the same kind of medical care and treatment in Mexico as he does in the United States. *Declaration of [REDACTED] in Support of Motions*, dated October 5, 2007; *see also Declarations of [REDACTED]*, dated August 2, 2004, and September 19, [no year]; *Letter from [REDACTED]* undated.

The applicant states that her husband cannot cook, drive, or read due to his eye problems. She states that she has worked as a seamstress and at the 7-11 store in order to survive. She states that she has not worked since she sustained job injuries in 2004 and that she receives \$400 per month for her work-related injuries. She contends she has back pain, but expects to be able to return to work next year

and could make at least \$1,500 per month. According to the applicant, she attends to her husband twenty-four hours a day. The applicant states she prepares special meals for her husband, constantly monitors his blood sugar level, and takes him to doctor appointments or the hospital. She states that her husband's grown children do not visit him at all and there is no one else to care for her husband. According to the applicant, when her husband was diagnosed with prostate cancer, he went into a depression. The applicant fears that without her presence, her husband would fall into a severe depression and would suffer emotional distress, financial hardship, and physical strain. She states her husband is a very sick man and will not receive the kind of medical treatment in Mexico that he currently receives. She states that she is concerned that his health would rapidly deteriorate in Mexico, that he would be taking chances with his medical condition and his life in Mexico, and that medical treatment in Mexico is very expensive. *Declaration of [REDACTED] in Support of Motions*, dated October 5, 2007.

Although the AAO is sympathetic to the couple's circumstances, [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. Although the AAO recognizes that [REDACTED] is currently sixty-five years old and has some health conditions, if he 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 [REDACTED] medical conditions, there is no evidence in the record, such as a letter in plain language from a health care professional, corroborating his claim that he needs or relies on his wife for assistance in any way. Significantly, there is no evidence in the record substantiating the applicant's and [REDACTED] contention that he has been diagnosed with prostate cancer. [REDACTED] contends that in support of his claim, he has submitted a copy of the medical bill showing the date when the ultrasound and biopsy were performed, a copy of the ultrasound, a copy of the bill showing he was prescribed Metroformin, and a copy of a bill showing a service date of July 18, 2006, with a [REDACTED]. *Declaration of [REDACTED] in Support of Motions* ¶¶ 23-26, *supra*. Nonetheless, none of these documents state that [REDACTED] has been diagnosed with prostate cancer and there is no letter in plain language from any health care professional diagnosing him with prostate cancer. In addition, according to the applicant's October 5, 2007 affidavit, "[a]bout three months ago . . . we were told that my husband has prostate cancer." *Declaration of [REDACTED] in Support of Motions* at ¶ 18, *supra*. However, the documentation submitted with the motion show that [REDACTED] prostate biopsy occurred on May 31, 2006, and that his appointment with [REDACTED] occurred on July 18, 2006, approximately one year prior to when the applicant contends she and her husband were told he has prostate cancer. Even if [REDACTED] has been diagnosed with prostate cancer, there is no letter from any health care professional providing sufficient details regarding the treatment, prognosis, or severity of his purported cancer. 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.

Similarly, although the record shows that [REDACTED] has diabetes, there is no letter from any health care professional providing sufficient details regarding the treatment, prognosis, or severity of his diabetes and there is no suggestion he requires any assistance due to his condition. *Letter from [REDACTED]*, [REDACTED] dated July 21, 2004 (letter from [REDACTED] physician stating only that [REDACTED] "has been

seen in our clinic for treatment of his diabetes since January 28, 2003"). Although the record shows that [REDACTED] was seen in the emergency department on September 26, 2007, for elevated blood sugar levels, again, there is no suggestion he requires his wife's assistance. Regarding the eye injury Mr. [REDACTED] sustained in 1974, as stated in the AAO's previous decision, there is no recent evidence in the record detailing the nature of Mr. [REDACTED] eye condition and any impact it may have on his ability to work or otherwise function normally.

With respect to the financial hardship claim, there is insufficient evidence that Mr. [REDACTED] hardship would be extreme. According to the applicant, she has been unemployed since 2004 and receives \$400 per month due to a work-related injury. As such, the applicant has provided minimal financial support to the couple's expenses. In addition, although Mr. [REDACTED] eye injury occurred in 1973, he was not determined to be totally and permanently disabled until 1984, more than ten years later. *U.S. Railroad Retirement Board, supra*. It is unclear why Mr. [REDACTED] was found to be disabled in 1984. Moreover, the record shows that Mr. [REDACTED] received a settlement of over \$71,000 in 1976 from the Southern Pacific Transportation Company. *Letter from [REDACTED]*, dated January 12, 1976. The record also shows that in 1997, Mr. [REDACTED] owned five houses and eight apartments in Ensenada, Mexico. *Marital Settlement Agreement*, dated August 18, 1997. Although the AAO does not doubt that denying the applicant's waiver application will cause some financial hardship to Mr. [REDACTED] without more detailed information addressing the couple's total assets, income, and expenses, there is insufficient evidence in the record to determine the extent of his financial problems.

Furthermore, the record does not show that Mr. [REDACTED] would suffer extreme hardship if he were to return to Mexico, where he was born, to be with his wife. As stated above, although the record shows that Mr. [REDACTED] is elderly and has some health conditions, there is no evidence showing that he has been receiving regular medical treatment for his conditions or suggesting that he cannot relocate to Mexico. There is no evidence in the record to corroborate the claim that Mr. [REDACTED]'s health conditions cannot be adequately monitored and treated in Mexico. In addition, although Mr. [REDACTED] has lived in the United States for many years, the fact that he has owned numerous real estate properties in Mexico suggests that he maintains some connection to Mexico. To the extent Mr. [REDACTED] receives disability benefits, there is no evidence showing that he could not continue to receive his benefits in Mexico. Considering all of the evidence in the aggregate, the record does not show that Mr. [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 (9th 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).

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(a)(9)(B)(v) 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 AAO dismissal of the appeal is upheld and the underlying waiver application denied.

ORDER: The dismissal of the appeal is upheld and the underlying waiver application denied.