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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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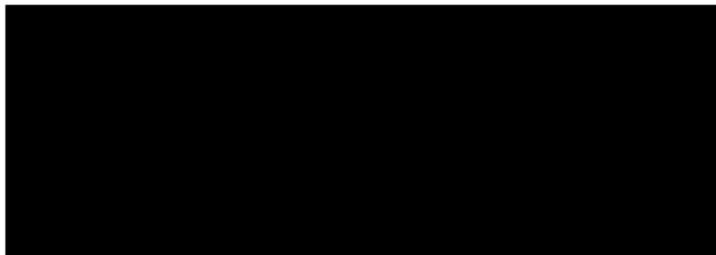
Date: **AUG 13 2012** Office: LAS VEGAS

File: 
(relates)

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and
Nationality Act (INA) section 212(i); 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

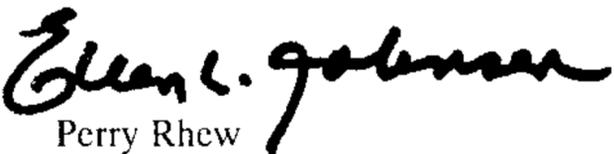


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Las Vegas, Nevada. 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 pursuant to Immigration and Nationality Act (the Act) § 212(a)(9)(C)(i)(II), 8 U.S.C. § 1182(a)(9)(C)(i)(II) for entering the United States without being admitted after an order of removal. The applicant was also 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 having attempted to procure admission to the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

On June 23, 2009, the Field Office Director determined that the Form I-601 was not supported by an underlying I-485 and therefore could not be approved. The Field Director denied Form I-485 based on the decision that the applicant was not admissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act and is eligible to apply for a waiver of inadmissibility of section 212(a)(6)(C)(i) of the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9)(C) of the Act, which provides in pertinent part that:

Aliens unlawfully present after previous immigration violations.

(i) In general.-Any alien who

...
(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

A Memorandum from [REDACTED] Acting Executive Associate Commissioner, entitled, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)," dated June 17, 1997, HQIRT 50/5.12, clarifies that:

Section 212(a)(9)(C)(i)(II) of the Act renders inadmissible those aliens who have been ordered removed under sections 235(b)(1) or 240 of the Act, or any other provision of law, and who enter or attempt to reenter the United States without being admitted. These aliens are also permanently inadmissible but may seek consent to

reapply for admission from the Attorney General after they have been outside of the United States for 10 years.

Section 212(a)(9)(C)(i)(II) of the Act applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997.

The record reflects that the applicant was ordered excluded from the United States on July 3, 1996. The applicant was deported that same day and reports that she reentered the United States unlawfully approximately two weeks later in July 1996. The applicant states that she has remained in the U.S. since that time.

Because the applicant's unlawful reentry into the U.S. occurred before April 1, 1997, section 212(a)(9)(C)(i)(II) of the Act inadmissibility provisions do not apply to the applicant. The applicant is, however, inadmissible under the grounds set forth in section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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.

The record reflects that the applicant's July 3, 1996 exclusion order was the result of her apprehension at the San Ysidro Port of Entry for having attempted to procure admission to the United States using a U.S. lawful permanent resident card belonging to another individual. As a result, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) 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.

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. 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).

The applicant did not initially address their eligibility for a waiver of inadmissibility under section 212(i) on appeal. Because the AAO determined that the applicant is not inadmissible under section 212(a)(9)(C)(i)(II) of the Act, but remains inadmissible under section 212(a)(6)(C)(i) of the Act, we sent a request for evidence in support of her eligibility for a waiver of inadmissibility. The applicant was provided 12 weeks to respond pursuant to federal regulations at 8 C.F.R. § 103.2(b)(8). Counsel for the applicant responded to the request for evidence in a timely manner with a legal brief and evidence in support of the request for a waiver of inadmissibility.

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. In this case, the applicant has two qualifying relatives, her U.S. citizen husband and her U.S. lawful permanent resident mother. Counsel has only put forth evidence in support of hardship to the applicant's U.S. citizen husband on appeal. Additionally, the AAO notes that Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant's children will not be separately considered, except as it is shown to affect the applicant's spouse or mother. 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).

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.

Counsel states that the applicant’s spouse would suffer emotional and financial hardship if he were to be separated from the applicant. In regards to emotional hardship, counsel for the applicant states that the applicant is her spouse’s closest family member. He states that the applicant’s spouse’s parents are deceased and that the applicant’s spouse’s only other family members in the United States are his cousins. He also states that the applicant and her spouse have been married for 13 years, and that the applicant’s spouse depends on the applicant, especially to care for their two school age children, ages 12 and 16. In the applicant’s spouse’s statement, he says that he would “suffer emotional distress” because of loneliness without the applicant. He also states that he would worry for his wife’s safety in Mexico. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. In regards to the state of Jalisco, where the applicant’s family resides, the travel warning states that “non-essential travel to areas of the state that border the states of Michoacán and Zacatecas” should be deferred and caution should be exercised “when traveling at night outside of cities in the remaining portions of this state.” Although the level of crime in Mexico is cause for concern, there is no indication in the record of the particular risks that the applicant would face there. The record contains two letters from family members of the applicant who reside in Jalisco and work for the local government. Those letters do not mention safety concerns. Although the applicant’s spouse’s assertions regarding his emotional health and concern for the applicant are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA

1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

In regards to financial hardship, counsel for the applicant states that the applicant’s spouse would have to reduce the number of hours that he works, if he could no longer rely on his spouse to care for their children. He also states that the applicant’s spouse would not be able to support two households, one in Mexico, and one in the United States on a reduced income. The record illustrates that the applicant’s spouse earned \$54,797 in 2010 in his work as a landscaper for Shadow Creek Club in Las Vegas, Nevada. The record does not illustrate what the applicant’s spouse’s income would be if he were to reduce his overtime hours in the absence of his spouse; however, a pay stub dated May 20, 2012 indicates that for the year 2012, the applicant’s spouse had earned \$956.57 in overtime pay for the first part of the year, where his total income for the year-to-date from regular pay was \$18,015.11. Based on this information, it does not appear that the applicant’s spouse’s overtime pay is a substantial portion of his salary. No documentation was provided to illustrate what the cost would be for the applicant’s spouse to provide support to her in Mexico. Additionally, documentation in the record illustrates that the applicant has substantial family ties in Mexico. It is not clear from the record if the applicant would be able to obtain employment in Mexico. Without supporting evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the AAO notes the applicant’s spouse’s difficult situation and recognizes that the applicant’s spouse will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of “extreme” beyond those hardships normally experienced by individuals faced with separation from their spouse due to immigration inadmissibility.

As to whether the applicant’s spouse would suffer extreme hardship if he were to relocate to Mexico to reside with the applicant, counsel for the applicant states that the applicant’s spouse would face financial and emotional hardship. The record indicates that the applicant’s spouse, who is originally from Mexico, has had steady employment in the United States where he earns \$22.42 per hour as a landscaper and receives health benefits. The applicant’s spouse states that he does not believe that he would be able to obtain employment in Mexico as he does not have a high school education. He states that the applicant has family members who work in the local government; however, their positions are contingent on political elections and also require at least a high school diploma. Although the record illustrates that the applicant’s spouse would not likely be able to obtain to make a living at the same level that he does in the United States, the record does not illustrate that the applicant would be unable to support his family in Mexico or why the applicant would be unable to obtain employment in Mexico. The record indicates that the applicant and her spouse have two school age children. The applicant states that her children wish to continue their education in the United States and have dreams for their future in the United States. As noted above; however, Congress did not include hardship to the applicant’s children as a factor to be considered in assessing

extreme hardship under section 212(i) of the Act. The applicant must illustrate how hardship to her children would cause hardship to one of her qualifying relatives, her husband or her mother. When the evidence is considered in the aggregate, it is not possible to determine that the hardship that the applicant's spouse would face if he were to relocate to Mexico would be extreme.

The AAO notes that the applicant and her spouse refer to hardship to the applicant's mother in their statements. The record indicates that the applicant's mother is a lawful permanent resident of the United States; however, there is contradictory information in the record in regards to the applicant's mother's physical residence. The applicant and her spouse state that the applicant's mother resides with them in Las Vegas, Nevada and that the applicant is responsible for care of her mother. A letter in the record; however, from [REDACTED] in Jalisco, Mexico, dated June 22, 2006, states that the applicant's mother resided in Jalisco, Mexico where she was being treated for "arthritis and high levels of cholesterol." If this is no longer the case and the situation has changed, the burden of proof is on the applicant to provide updated evidence of her mother's physical residence, medical condition, and follow-up care needed. Section 291 of the Act, 8 U.S.C. § 1361. Although the applicant's assertions regarding hardship to her mother are relevant and have been taken into consideration, as stated above, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. at 175. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish the applicant's mother's present condition or location. Based on the evidence of record, considered in the aggregate, hardship to the applicant's mother as a result of separation from the applicant or as a result of relocation to Mexico, does not rise to the level of "extreme" beyond those hardships normally experienced as a result of immigration inadmissibility.

The applicant's qualifying relatives' concern over the applicant's immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by a qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative 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 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. 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.