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



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: **AUG 13 2012**

OFFICE: ALBUQUERQUE, NM

[REDACTED]

IN RE: [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 PETITIONER:
[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 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 in accordance with the instructions on 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Albuquerque, New Mexico, 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 procuring admission into the United States by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may live in the United States with his spouse and children.

In a decision dated February 4, 2010, the director determined the applicant had failed to establish that his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

The applicant indicates on appeal that his wife will experience extreme emotional and financial hardship if he is denied admission into the United States. In support of his assertions the applicant submits letters from himself, his wife, and family and friends. The record also contains financial evidence. The entire record was reviewed and considered in rendering a decision on the appeal.

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 when entering the United States with his I-94 and border crossing card on February 6, 2009, the applicant stated he was visiting friends and failed to inform immigration officers that he intended to reside in the United States with his wife and children. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for procuring admission into the United States by willfully misrepresenting a material fact. The applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's spouse is a qualifying relative under section 212(i) of the Act. The applicant refers to hardship his U.S. citizen children would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien'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 thus be considered only to the extent that it affects the applicant's U.S. citizen spouse.

The record contains letters written by the applicant and his wife asking for forgiveness for the applicant's past mistakes. Evidence in the record establishes that they have been married since 2008, have two children, and have a close family relationship. Both work in order to pay their monthly financial obligations amounting to \$900, and the applicant fears his wife will need to ask for government assistance if he is unable to financially contribute to the household. He also fears his wife will become depressed and resume smoking if he is removed to Mexico.

Employment and tax evidence confirms that in 2010, the applicant earned \$17,367 and his wife earned \$16,273. His wife's employment compensation for the 2010 to 2011 school year was \$25,755. The record contains evidence that the couple owns a home together and that they have a joint bank account and utility bills in both of their names. Friends and family refer to financial hardship the applicant's wife experienced after her mother died in 2006, which caused her to use credit cards to buy food and to sometimes rely on a church food bank in order to feed her family. The letters state the applicant's wife would experience financial and emotional hardship if she remains in the United States as a single mother, or if she moves with the applicant to Mexico.

Upon review, the AAO finds the evidence in the record fails to establish that the hardships faced by the applicant's wife, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship if the applicant were denied admission and his wife remained in the United States. The record contains no medical evidence to corroborate assertions that the applicant's wife will suffer from depression if the applicant is denied admission into the country, or that she will experience emotional or physical hardship beyond that normally experienced upon the removal of a family member if the applicant is not allowed to remain in the United States. In addition, the record lacks evidence corroborating concerns that the applicant's

wife would be unable to pay for her expenses without the applicant's help or that she would experience extreme financial hardship if she remained in the United States. Although the record contains a quitclaim deed showing the applicant's wife added the applicant to the deed as a home property owner, the evidence does not establish they make mortgage payments. The record additionally lacks evidence to corroborate assertions that the applicant's wife has relied on assistance from her church in the past, or that she will become dependent on government assistance without the applicant's financial assistance.

Although assertions 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)).

The cumulative evidence in the record also fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to Mexico. The letters written by the applicant and his wife do not claim that she will experience hardship if she moves to Mexico, and the record contains no evidence to establish such hardship.

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. 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.