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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



HS

Date: AUG 30 2012

Office: CHICAGO, IL

FILE:



IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (INA), 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 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 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 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 his mother is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his mother, his wife, and his child in the United States.

The field office director found that the applicant misrepresented a fact to the U.S. Consulate in Mexico, was denied a visa, and subsequently entered the United States without inspection in 1996. The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the applicant does not merit a favorable exercise of discretion. In addition, the field office director found that the applicant has not presented any evidence that he is eligible to adjust his status under section 245(i) of the Act because there is no evidence a petition or labor certificate was filed on his behalf prior to April 30, 2001. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated April 6, 2010.

On appeal, counsel contends the applicant is eligible to adjust his status and includes a copy of an approved Form I-130 with a priority date of December 22, 1995. In addition, counsel contends the applicant established extreme hardship, particularly considering his mother's health and financial conditions, his wife's psychological and emotional attachment, and country conditions in Mexico.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on December 19, 2002; a copy of the birth certificate of the couple's U.S. citizen son; a letter from the applicant; a letter from the applicant's mother; a letter from a physician and copies of her medical records; numerous letters of support; copies of tax records, bills, and other financial documents; a copy of the U.S. Department of State's Human Rights Report for Mexico; copies of photographs of the applicant and his 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 counsel concedes, that the applicant entered the United States pursuant to a tourist visa on numerous occasions in the early 1990's. According to the applicant, he first entered the United States in 1991 and got his GED in 1994. In 1995, the applicant attempted to get another tourist visa at the U.S. Consulate in Mexico City. However, his visa application was denied after the Consular Officer learned the applicant had previously resided in the United States. The applicant concedes he entered the United States without inspection in 1996 and has remained in the United States ever since. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant's inadmissibility is uncontested. In addition, the AAO notes that the record shows that the applicant's mother filed a Form I-130 on the applicant's behalf which was approved on March 28, 1996. According to the approval notice in the record, the priority date of the Form I-130 was December 22, 1995. Therefore, the record shows that the applicant is eligible to adjust his status under section 245(i) of the Act because a petition was filed on his behalf prior to April 30, 2001. Therefore, the applicant is eligible to apply for a waiver of inadmissibility under section 212(i) of the Act.

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-I-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 mother, [REDACTED] states that the applicant is her only child. According to [REDACTED] she has been divorced twice and is now single. She states that her son, his wife, and their child are the only family she has in the United States. In addition, [REDACTED] states she has been diagnosed with medical conditions and is dependent solely on her son for assistance. [REDACTED] contends she is unemployed, has no health insurance, and relies on her son financially and to take her to and from the hospital and doctor’s appointments. Counsel contends that [REDACTED] requires regular medical care and that if she returns to Mexico, she would be an ideal victim of crime in Mexico considering she is a sick, elderly, divorced, American woman and Mexico is a very dangerous place. In addition, according to the applicant, his mother had kidney stone surgery in August of 2006, has low blood pressure, and suffered a minor stroke.

The applicant's wife, [REDACTED] states that her husband is her one true love, that they have a son together, and that her family is inseparable. According to [REDACTED] she would suffer emotional and financial harm if her husband's waiver application were denied. She contends that at least half of their earnings would be gone and that she is afraid of possible depression and mental dysfunction if her husband does not stay in the United States.

After a careful review of the entire record, the AAO finds that there is insufficient evidence to show that either the applicant's mother or wife would suffer extreme hardship if the applicant's waiver application were denied. With respect to the applicant's mother, Ms. [REDACTED] the AAO finds that if she remained in the United States without her son, she would suffer extreme hardship. The record shows that [REDACTED] is currently sixty-five years old and copies of her medical records indicate she has hypertension, osteoporosis, had an abnormal EKG in 2008, underwent a stress test, was administered an IV injection, and takes five medications daily. Copies of her medical bills in the record total more than \$2,000 and show that she does not have medical insurance. According to the applicant and [REDACTED], she is unemployed and relies solely on her son for financial support. Considering these unique circumstances cumulatively, particularly her age, medical conditions, and reliance on her only child, the AAO finds that the hardship [REDACTED] would experience if she remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of returning to Mexico to avoid the hardship of separation from her son and the record does not show that she would suffer extreme hardship if she relocated to Mexico. The record shows that she was born in Mexico and has received medical care in Mexico as recently as July of 2009. A letter from a cardiologist in Mexico states that [REDACTED] "[m]ay travel by plane without any trouble." *Letter from [REDACTED]*, dated July 22, 2009. There is no evidence that Ms. [REDACTED] medical problems have not be adequately monitored or treated in Mexico. Although the AAO recognizes that medical care in more remote areas of Mexico is limited and training and availability of emergency responders may be below U.S. standards, the U.S. Department of State explicitly states that "adequate medical care can be found in major cities in Mexico." *U.S. Department of State, Country Specific Information, Mexico*, dated June 21, 2012. According to the applicant's Biographic Information form (Form G-325A), both the applicant and [REDACTED] were born in Mexico City and the record shows that Ms. [REDACTED] has been receiving medical care in Mexico City, not in a remote area of Mexico. The AAO further notes that although a Travel Warning has been issued for parts of Mexico, there is no advisory in effect for Mexico City. *U.S. Department of State, Travel Warning, Mexico*, dated February 8, 2012. Therefore, even considering all of the evidence cumulatively, the record does not show that Ms. [REDACTED] readjustment to living in Mexico would be any more difficult than would normally be expected.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA

1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to his mother, Ms. [REDACTED]

With respect to the applicant's wife, [REDACTED] there is insufficient evidence to show that she will suffer extreme hardship if her husband'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 financial hardship claim, although the record contains voluminous financial documents, there is insufficient evidence to show that [REDACTED] would suffer extreme hardship without her husband's financial support. According to the most recent tax returns in the record, in 2008, the couple earned wages of \$90,990 as well as \$18,800 in rental income from two rental properties. A letter from [REDACTED] employer states that in 2007, she earned \$45,550, plus a 10% shift differential. The record also shows that [REDACTED] filed several Affidavits of Support, affirming she would financially support the applicant based on her salary alone. See *Affidavit of Support Under Section 213A of the Act (Form I-864)*, dated September 21, 2007 (listing her individual annual income as \$46,715); see also *Affidavit of Support Under Section 213A of the Act (Form I-864)*, dated August 25, 2004 (indicating that Ms. [REDACTED] assets include \$220,000 in real estate and \$11,300 in stocks, bonds, and certificates of deposit). Therefore, although the AAO acknowledges that [REDACTED] would suffer some financial hardship, the record does not show that her hardship would be extreme. Regarding the emotional hardship claim, although the AAO is sympathetic to the family's circumstances and recognizes that [REDACTED] would be a single parent to the couple's minor child, there is no suggestion in the record that the applicant's situation is unique or atypical compared to other individuals 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). Even considering all of the evidence in the aggregate, there is insufficient evidence in the record for the AAO to conclude that [REDACTED] would suffer extreme hardship if she decided to remain in the United States without her husband.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if she relocated to Mexico to be with her husband. Although the AAO recognizes counsel's contention that [REDACTED] is from the Philippines and that conditions in Mexico can be dangerous, as stated above, the applicant was born in Mexico City, a part of Mexico where there is no travel advisory in effect. [REDACTED] does not contend that she or the couple's son suffers from any medical or mental health condition that would make their adjustment to living in Mexico any more difficult than would normally be expected. Therefore, even considering all of the evidence cumulatively, the record does not show that [REDACTED] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother or wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.