



U.S. Citizenship
and Immigration
Services

[REDACTED]

715

DATE: **DEC 05 2012** OFFICE: CHICAGO

FILE: [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 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 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,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative, as the spouse of a lawful permanent resident, who seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated August 3, 2011.

On appeal, counsel for the applicant asserts that the applicant has demonstrated that her spouse would suffer extreme financial hardship upon separation from the applicant because he would have to support two households. Counsel further asserts that the applicant's spouse would suffer extreme hardship upon relocation to Mexico due to his family ties in the United States, the loss of his current employment, and the conditions in Mexico.

In support of the waiver application and appeal, the applicant submitted identity documents, a letter from her spouse, medical documentation concerning her spouse, a letter of employment for the applicant's spouse, documentation concerning the applicant's children's education, background information concerning conditions in Mexico, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

- (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 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 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...

The applicant applied for a nonimmigrant visa to enter the United States on March 12, 1997. In connection with this application, the applicant submitted a fraudulent employment letter. The applicant attempted to gain entry to the United States through her misrepresentation of her employment status in Mexico. Accordingly, the record supports that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant does not dispute the applicability of this ground of inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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.

The record reflects that the applicant is a 44 year-old native and citizen of Mexico. The applicant’s spouse is a 49 year-old native of Mexico and lawful permanent resident of the United States. The applicant, her spouse, and their children are currently residing in Cicero, Illinois.

The applicant’s spouse asserts that he cannot live without the applicant because he suffers from insomnia, chronic fatigue syndrome, and anxiety, and he needs the applicant to help him fall asleep and to wake him up in the morning after he takes his medication. The record contains a letter from the applicant’s spouse’s physician stating that the applicant’s spouse suffers from insomnia and anxiety, is taking Captpril and Xanax, and has been referred to the Sleep Disorder Clinic. The applicant’s spouse asserts that he would be depressed and his conditions would be heightened if he were separated from the applicant. It is noted that the applicant’s spouse’s physician’s letter is dated August 7, 2009 and there is no updated letter concerning the applicant’s spouse’s condition or the result of his referral to the Sleep Disorder Clinic. It is acknowledged that separation from a spouse nearly always creates hardship for both parties and the record demonstrates that the applicant’s spouse would suffer emotional hardship in the absence of the applicant. However, the record does not demonstrate that his emotional hardship would be so serious that it, for example, would interfere with his ability to work and provide for his family.

The applicant's spouse asserts that he would suffer financial hardship if he were separated from the applicant. Counsel asserts that if the applicant returned to Mexico, the applicant's children would join her because she is their caretaker. The applicant's spouse contends that he would have to support two households if the applicant and his children returned to Mexico. The record contains financial documentation evidencing the applicant's spouse's employment with [REDACTED] at a rate of \$16.40 per hour. The applicant's spouse submitted an approximation of his monthly expenses, but there is no supporting documentation for these figures, apart from evidence of his rental payment. There is insufficient evidence to determine that the applicant's spouse would be unable to maintain his financial obligations upon separation from his spouse and children. It is noted that the record reflects that if the applicant returned to Mexico, she would return to Guadalajara to be close to her family members. There is no information concerning the extent to which they could assist with her return or the extent of her financial needs in Mexico. Further, the record does not contain updated tax returns or evidence of the applicant's spouse's income, as the most recent tax return dates from 2008. There is insufficient evidence in the record to find that the applicant's spouse would suffer significant financial hardship upon separation from the applicant. In the aggregate, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative would rise to the level of extreme hardship if he were separated from the applicant.

The applicant's spouse asserts that he cannot relocate to Mexico because he has lived in the United States for most of his life and he and his children would be separated from their relatives and lives in the United States. The applicant's spouse asserts that his children would have to adapt to the language and culture of Mexico if they relocated and he would fear for their safety. Counsel for the applicant also asserts that the applicant's spouse would risk not finding employment in Mexico, face unsafe country conditions in Mexico, and may be unable to obtain treatment for his medical conditions. The applicant's spouse states that he has been residing in the United States since he was five months old. The applicant's spouse also asserts that all his immediate family members reside in the United States. It is noted that the record does not contain any letters of support from his family members addressing the extent of the applicant's spouse's ties and relationships in the United States. The record does show that the applicant's spouse is currently employed in the United States. It is noted that there is no assertion that the applicant's spouse would be unable to communicate and seek employment in Mexico despite his long-term residence in the United States.

The applicant has stated that she would return to Guadalajara if her waiver application were denied. The Department of State's travel warnings for Guadalajara indicate that non-essential travel to areas of the border in common with Michoacán and Zacatecas should be deferred. There is no similar travel warning pertaining to the other areas of Guadalajara. Further, there is no indication that the applicant's spouse would be unable to procure treatment for insomnia and anxiety if he resided in Mexico. In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Mexico.

While 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 exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 her lawful permanent resident spouse 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 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.