



**U.S. Citizenship
and Immigration
Services**



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DATE: **DEC 18 2012**

Office: LOS ANGELES

File: 

IN RE: Applicant: 

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:

SELF-REPRESENTED

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.

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application, and it 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States by fraud or misrepresentation. She is married to a lawful permanent resident and is the derivative beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). The applicant does not contest this finding of inadmissibility, and is seeking a waiver of inadmissibility in order to live in the United States with her husband and children.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, April 25, 2011.

On appeal, the applicant provides a brief and new hardship evidence including, but not limited to, medical records, a statement from her husband, and photographs. The record on appeal also includes documentation submitted with the waiver request, including tax returns and W-2 forms, marriage and birth certificates, and a copy of a green card. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

(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)(1) of the Act provides:

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 [...].

The record reflects that, on January 13, 1996, the applicant attempted to procure admission by using the border crossing card of another person. During secondary inspection, she admitted being an impostor and was informed she would have a hearing before an Immigration Judge, but there is no indication the hearing was ever set, or that she ever left the country. The only inadmissibility at issue and supported by the facts on record is one for fraud or misrepresentation.

A waiver of inadmissibility under section 212(i) is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made 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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from relocation, the qualifying relative claims moving to Mexico would have severe consequences for him and his children. Besides jeopardizing his permanent resident status, he contends such a move would cause him to trade his U.S. job for poor job prospects in his native country. In addition to the economic risk this would entail, he states that criminal activity in Mexico would cause his family to live in constant fear. While aware of the *Travel Warning—Mexico*, issued by the U.S. Department of State (DOS) on February 8, 2012, the AAO notes the record fails to show the applicant or her husband would relocate to an area covered by the advisory. Similarly, the applicant has made no showing that her husband has explored employment opportunities in Mexico to support his job worries.¹ There is no documentation of the qualifying relative's current job or income, with the most recent evidence being a 2004 job letter and 2003 tax return and W-2 form. 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 applicant states that her husband is fearful of the negative impact on his children, ages nine and nearly 13, of moving to a country they have never even visited. Besides potential safety risks, the applicant's brief contends her school age children would experience difficulties where their primary written and spoken language is English and where they would not have access to medical care meeting U.S. standards. There is documentation that the elder child has a congenitally deformed left hand, for which she has received physical therapy and regular monitoring since birth. Her doctors' notes establish that, while her prognosis is good, she is a candidate for reconstructive surgery in the future.² The record suggests that the opportunity for such treatment would be jeopardized in Mexico. The evidence shows that the child has received both specialized care for behavioral issues connected with her disability and therapy to help her overcome these challenges. Although reflecting that she has adapted to many of her physical limitations -- and learned to cope with the emotional aspects -- of her disability, the record also establishes that her father is worried about the adverse effect of removing such an adolescent from a nurturing, supportive environment to a new

¹ The applicant's brief states her husband works on a chicken ranch. There is no documentation of this job, nor any showing that similar work is unavailable in Mexico.

² Reference to a future surgical option is noted in a pediatrician's letter when his patient was six years old. A surgical consult when she was nine concluded that treatment options had become limited.

situation where she would lack access to familiar resources central to her adjustment and thus experience culture shock.

The totality of the circumstances, including jeopardy to the qualifying relative's immigration status and fear that loss by his disabled daughter of ready access to medical providers who have monitored and treated her since birth, reflect worries that are resulting in hardship to the applicant's husband. The applicant has thus established that these concerns go beyond the usual or typical results of removal or inadmissibility and represent extreme hardship to a qualifying relative.

Regarding separation, the applicant's husband contends the applicant's departure will cause him emotional and financial hardship, primarily because his wife's absence removes the caregiver of their two children. He claims that his job requires him to work odd hours that do not permit the flexibility of arranging shifts in order to be home for his children before and after school. He points out his wife is a homemaker who transports the children to/from school, has long familiarity with their daughter's hand issues, and, by seeing the child through various therapies and challenges imposed by her disability, forged a mother-daughter bond that cannot be replaced, either by him or by someone he might hire to care for the children while he is at work. He states a special concern that, as an adolescent who needs help dressing, his daughter will be uncomfortable having her father help her with personal matters and reports having no relatives nearby to help out. As noted previously, there is no documentation about the qualifying relative's work schedule, location, or duties. There is no information about school schedules and transportation options (e.g., bus), or evidence indicating the children need any special level of supervision. The AAO notes a three and one-half year old report by the consulting hand surgeon observing that the daughter claimed to have few limitations due to the lack of fingers on her left hand – could dress and feed herself, ride a scooter, use a computer keyboard, and play sports like softball at school – and was generally unaffected by teasing about her deformity. There is no indication on record that her coping skills have diminished since that time.

The applicant's husband claims to be unable to afford a caregiver for his children. There is no documentation of his current income to substantiate this claim, no information on the costs of childcare, and no indication he has investigated the available options. The record reflects that he earned in the mid-\$30,000 range annually from 2001 to 2003, suggests that he is now employed in a different job, and contains no recent information about the wages or benefits³ of the new position. There is no documentation of the family's living expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici, supra.*

The documentation on record, when considered in its totality, reflects that the applicant has not established her husband will suffer extreme hardship if his wife is unable to live in the United States as a permanent resident. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation is typical of individuals separated as a result of removal and inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship as required under section 212(i) of the Act.

³ A 2009 statement from a medical center indicates that his daughter was covered by medical insurance.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings 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.