

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



HS

DATE: **DEC 18 2012**

Office: MEXICO CITY

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:



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 District Director, Mexico, City, Mexico, 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. He is the adult son of a naturalized U. S. citizen father and a lawful permanent resident mother, and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility, and is seeking a waiver of inadmissibility in order to immigrate to the United States.

The district 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 District Director, August 12, 2010.*

On appeal, counsel for the applicant provides new hardship evidence including, but not limited to: a psychological evaluation; medical records¹ and bills; physical therapy reports; statements from qualifying relatives; bank and social security benefits statements; bills for medicine, utilities, and tuition; and country condition information. The record on appeal also includes documentation submitted with the waiver request, including a tax return and W-2 form, hardship statement, job letter, utility bills, and medical bills. 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, between 1998 and 2005, the applicant entered the country at least two times without admission or parole and departed voluntarily. In 2005, he overstayed a lawful admission in

¹ There is a Workers' Compensation Work Status Report in the name of [REDACTED] bearing no apparent relation to either of the applicant's parents or to any other family member.

H-2B status and appears to have been permitted to leave voluntarily after being detected along with two others during a traffic stop. He admits to having attempted to procure admission during 2000 or 2002 by using the border crossing card of another person. The only inadmissibility at issue is one for fraud or misrepresentation.²

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives 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-Moralez*, 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.

² Any inadmissibility for unlawful presence appears to have involved a three-year bar under section 212(a)(9)(B)(i)(I) of the Act and, thus, has expired, as the applicant has been outside the country since before November 2009.

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 applicant claims that moving to Mexico would have severe consequences for his parents. He claims that their job prospects would be poor, and notes that they both have chronic health problems. The record reflects that the applicant’s 72 year old father has been retired since 2003, but worked in construction until 2008 or 2009, when rheumatoid arthritis, chronic pain syndrome, osteoporosis, and other conditions curtailed his work schedule to 20 hours per week, before forcing him to cease working by 2010. While there is no evidence of his nearly 64 year old mother’s health conditions, medical bills and records substantiate his father’s degenerative problems, as well as that he has high blood pressure and poorly functioning kidneys. The AAO notes the applicant does not claim that necessary treatment for his father would be unavailable in Mexico, and the record reflects that his father began traveling to Mexico in order to take advantage of lower costs for treatment when the portion of his medical bills not paid by insurance became too great. Country condition information thus does not establish that living in Mexico would impose a healthcare burden. *See Mexico—Country Specific Information*, June 21, 2012. And, due to the constraints imposed by his father’s ill health, the applicant is unable to show that his father’s employment prospects would be limited by country conditions, rather than by the medical conditions that forced him to cease working his U.S. job. In addition to not supporting general claims about the applicant’s mother’s health, the record shows that she is not working and has no work experience.

While aware of the Travel Warning, issued by the U.S. Department of State (DOS) on February 8, 2012, the AAO notes the record fails to show the applicant lives in an area covered by the advisory. A psychological evaluation reports the applicant’s father claiming to have ten children, eight of whom he asserts live legally in the United States. Regarding ties to the United States, other than evidence of a daughter paying college tuition during 2009, there is little or no documentation

concerning the immigration status or location of any of these sons and daughters. The information in the evaluation leads to the conclusion that, at 40 years old, the applicant is the eldest child, the youngest is nearly 20, and all are adults. There is no evidence that relocation to Mexico of the applicant's parents would impose hardship on any of their now adult children. The psychological evaluation states that the qualifying relatives live with four of their children, who help their parents financially, not vice versa. The record suggests that, besides the applicant herein, his parents have one other child living in Mexico.

As the record reflects that the applicant's father is keeping medical costs down by going to Mexico for some doctor visits and medication, is retired and living on social security benefits, and is receiving financial support from adult children who live with him, the totality of the circumstances fails to show that moving back to his native country would impose extreme hardship on him or his wife. While the AAO is sensitive to the fact that the applicant's parents may prefer to live in their adopted country, the applicant has not established that their inconvenience in relocating goes beyond the usual or typical results of removal or inadmissibility. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record does not substantiate that a qualifying relative would suffer extreme hardship by relocating abroad.

Regarding separation, the applicant's father contends the applicant's absence has caused him emotional and physical hardship. A psychological evaluation diagnoses him with depression and anxiety, based on symptoms -- including sadness, fatigue, and nervousness -- associated with worry and stress about the applicant's immigration problems. The report offers no further detail about the nature or severity of his condition, prognosis, or recommended treatment. There is no indication that the applicant ever provided any particular assistance to his parents or that the four children who live with them now are unable to offer the same help provided by their eldest sibling. The AAO notes, moreover, that the qualifying relatives' eight children in this country comprise a substantial support network.

Other than claiming that lack of income will prevent him and his wife from visiting their son in Mexico, the applicant's father asserts no financial hardship associated with his son's absence. There is no indication the applicant ever contributed to his parents' household income; there is no documentation regarding the household expenses being paid by the four adult children living with the qualifying relatives; and there is no evidence of the applicant's income and expenses in Mexico or that his presence there represents an economic burden. The AAO notes that the applicant's father has had sufficient funds to travel to Mexico for medical treatment.

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

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.