



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

[REDACTED]

H5

DATE **DEC 21 2012**

OFFICE: SAN BERNARDINO, CALIFORNIA

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, California, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States through willful misrepresentation. The applicant is the daughter of lawful permanent residents, and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her son. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her parents, son, and daughter in the United States.

The Field Office Director concluded that the applicant failed to establish that her parents were qualifying relatives as defined by the inadmissibility waiver provisions of the Act or that extreme hardship would be imposed on her qualifying relatives, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated September 30, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erroneously denied the applicant's waiver application as the corroborating, evidentiary documentation establishes the applicant's parents' legal status in the United States as well as the extreme hardship that they would suffer because of her inadmissibility. *See Notice of Appeal or Motion (Form I-290B)*, dated October 24, 2011.

The record includes, but is not limited to: a brief from counsel; letters of support from the applicant's parents and pastor; and identity, medical, employment, financial, and academic documents. 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) 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.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having attempted to procure admission to the United States around 1989, by presenting a lawful permanent resident card that did not belong to her. The record supports the finding, and the AAO concurs that the misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record further reflects that the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed upon her arrival in the United States. Inadmissibility under section 212(a)(9)(A)(i) of the Act may not be waived pursuant to a Form I-601 application. In the event that the applicant obtains an approved Form I-601, she will need to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), in order to address her inadmissibility under section 212(a)(9)(A)(i) of the Act.

The record reflects that upon presenting the lawful permanent resident card that did not belong to her in 1989, the applicant was ordered removed for having attempted to enter the United States without proper documentation. The record further reflects that around June 1994, the applicant entered the United States without inspection by immigration officials and has remained to date.

The applicant may apply for conditional approval of Form I-212 under 8 C.F.R. § 212.2(j) before departing the United States, notwithstanding her ineligibility for adjustment of status. *See Instructions for Form I-212*. The approval of the Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States, and the Field Office with jurisdiction over the applicant's place of residence has jurisdiction over the application, irrespective of whether a waiver under section 212(g), (h), (i), or 212(a)(9)(B)(v) is needed. *See Instructions for Form I-212, Appendix I*.

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [now Secretary of Homeland Security (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. Hardship to the applicant or the applicant's son and daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only demonstrated qualifying relatives in this case. 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 of Immigration Appeals (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 Id.* at 568; *In re 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 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. I.N.S.*, 138 F.3d 1292, 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.

Counsel asserts that the existence of family ties in the United States has been traditionally considered the most important factor in determining hardship and that the preservation of family unity may be a central factor in an extreme hardship determination. *See Brief in Support of Appeal* (citing *Gutierrez-Centeno v. INS*, 99 F.3d 1529, 1533 (9th Cir. 1996); *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983); *Cerillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987)). The AAO acknowledges the observations of the Ninth Circuit, and adds that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) The present case arises within the jurisdiction of the Ninth Circuit, and due consideration is given to family separation in the present matter.

Counsel further asserts that the Ninth Circuit determined that an alien’s ties to the United States and the undeniable disruption of family unity in the case of an alien’s deportation would justify granting the waiver of grounds of inadmissibility. *See Brief in Support of Appeal* (citing *United States v. Arrieta*, 224 F.3d 1076 (9th Cir. 2000)). As above, the AAO acknowledges the Ninth Circuit’s holdings regarding the significance of family unity, but it is noted that the cited case concerns an individual who was found to have been prejudiced by a due process violation during deportation proceedings as the Immigration Judge failed to inform the individual of his eligibility for relief for a 212(h) waiver of inadmissibility, of which it was plausible that he could have received.

Counsel contends that the applicant’s parents would suffer extreme emotional, physical, medical, and financial hardship in the applicant’s absence as: they would have to witness the separation and deprivation of their daughter from her siblings, son, and daughter; they have been experiencing hypertension and depression since the denial of the applicant’s waiver application; they reside with the applicant and depend on her for their basic necessities given that they are elderly and their social security benefits amount to just over \$500/month; the applicant would be unable to find a job in Mexico comparable to her current salary and continue to provide for them given that the minimum wage is \$5/day; and the applicant does not have any relatives in Mexico to provide her with financial help. The applicant’s father further states that: he does not know what he and his wife would do and what would become of them without the applicant as she is the center of their family and the “glue that binds them together”; the applicant provides him a source of strength and support, and he would be distraught with anguish and suffering without her; his wife has become depressed and is taking Fluoxetine on a daily basis; he and his wife depend on the applicant and another daughter for all of their expenses and necessities; he has been retired since 2000, and the only income that he and his wife receive is from social security; and he does not believe that they could afford the costs of traveling to Mexico to visit the applicant.

Although the applicant’s parents may experience some hardship in the applicant’s absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record establishes that [REDACTED] diagnosed the applicant’s father and mother with hypertension and depression, respectively, and that [REDACTED] prescribed the applicant’s mother a daily medication. *Medical Letters*, dated November 1, 2011. However, the AAO notes that the diagnoses are

primarily based on self-reported information as the applicant's parents are new patients of [REDACTED] as of December 31, 2011, and the record does not include any additional medical records demonstrating the parents' physical and mental health. Also, the AAO notes that the record does not include any discussion of the specific course of treatment for the father's hypertension or the evaluative method used to make a diagnosis of the mother's depression. Absent an explanation in plain language from the treating physician of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed.

Additionally, the record is sufficient to establish that the applicant's parents have received \$534/month from the Social Security Administration since December 2008. However, the AAO notes that the record is unclear concerning the applicant's current employment status and income. Counsel indicates that the applicant would not earn in Mexico what she currently is earning, and thereby, would be unable to continue to support her parents. But, during her adjustment interview, conducted on July 26, 2011, the applicant indicated that she is unemployed. Also, the record does not include any evidence of the applicant's parents' financial obligations or their inability to meet those obligations in the applicant's absence. Moreover, the record does not include any specific evidence of labor or employment conditions in Mexico and the applicant's inability to contribute to the maintenance of her and her parents' households. The AAO is thus unable to conclude that the applicant's parents' hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship that the applicant's parents may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's parents would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's parents would experience extreme hardship if they relocated to Mexico to be with the applicant as: their family has resided in the United States for over two decades; they would be separated from their U.S. citizen child and grandchildren; and they would be exposed to the violence that has affected all regions in Mexico and would fear for the applicant's safety as well. Counsel also contends that the applicant's son and daughter would not relocate to Mexico with the applicant as they are adult, U.S. citizens, and thereby, their separation would be a permanent break-up of their family. The applicant's father also indicates that: he came to the United States 32 years ago; he has a U.S. citizen daughter and a lawful permanent resident son; he and his wife would be unable to find work in Mexico given their age; they could lose their lawful permanent residence status; and he fears the kidnapping of his family members.

The record is sufficient to establish that the applicant's parents would suffer hardship if they were to relocate to Mexico. The record demonstrates that they have continuously resided in the United States for over 30 years and maintain close relationships with their U.S. citizen and lawful permanent resident family members. They also maintain their lawful permanent residence status. Additionally, the U.S. Department of State has issued a Travel Warning for Jalisco, Mexico, where the applicant's parents would relocate: "defer non-essential travel to areas of the state that border the states of Michoacán and Zacatecas ... exercise caution when traveling at night outside of cities in the remaining portions of this state ... The security situation along the Michoacán and Zacatecas

borders continues to be unstable and gun battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival [Transnational Criminal Organizations] involving automatic weapons.” *Travel Warning, Mexico*, issued November 20, 2012. In the aggregate, the AAO finds that the applicant’s parents would suffer extreme hardship if they were to relocate to Mexico.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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 relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises 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 parents 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.