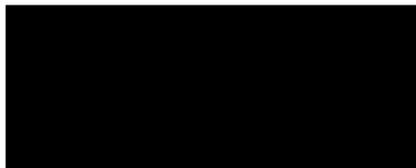


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

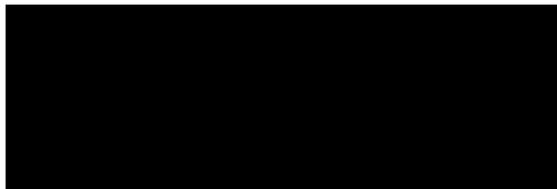


H5

DATE: **FEB 14 2012** OFFICE: HARLINGEN, TX FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(i)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Harlingen, TX, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Mexico, was found inadmissible under Immigration and Nationality Act (INA or the Act) § 212(a)(6)(C)(i) of the 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact due to his willful concealment of a material fact to gain entry to the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen wife.¹ The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to his U.S. citizen spouse.

On July 1, 2009, the Acting Field Office Director concluded that the hardship that the applicant's U.S. citizen wife would suffer did not rise to the level of extreme as required by the statute.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the record illustrates that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant is not admitted as a lawful permanent resident.

In support of the waiver application, the record includes, but is not limited to, a legal brief written by the applicant's attorney, a letter concerning the applicant's spouse's mental health, mortgage statements, pictures of the applicant and family, a sworn affidavit from the applicant's spouse with translation from Spanish to English, letters from the applicant's adult stepchildren, a letter from the applicant's church, a letter concerning the applicant's spouse's employment, a letter concerning the applicant's employment, federal tax returns for the applicant and his spouse, a sampling of bills for the applicant and his spouse, and records concerning the applicant's immigration history in the United States.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

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

Misrepresentation. - (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.

¹ The AAO notes that the date of the applicant's marriage to his present spouse precedes the date of his divorce from his prior spouse.

The record establishes that on March 15, 1993, the applicant pled guilty to violating 8 U.S.C. 1325(a), Attempted Illegal Entry by Willful Concealment of a Material Fact, in U.S. District Court Southern District of Texas, McAllen Division. He was sentenced to time served and offered voluntary return to Mexico. The AAO notes that the applicant was again arrested by immigration officials on April 30, 2002, when the tractor trailer that he was driving was found to contain 39 pounds of marijuana. No charges were filed in the case.

8 U.S.C. § 1325(a) provides in pertinent part:

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under Title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under Title 18, or imprisoned not more than 2 years, or both.

Although more specific information about the applicant's act of concealing a material fact to gain entry into the United States is not in the record, as the applicant did not contest the finding of inadmissibility on appeal, and the record does not show it to be erroneous, the AAO will not disturb the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes a U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse is the only qualifying relative in this case. There is no evidence that the applicant's mother is a U.S. citizen or lawful permanent resident. 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).

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.

In this case, the qualifying relative is the applicant's U.S. citizen spouse. We must consider whether the qualifying relative would suffer extreme hardship if they were to remain in the United States without the applicant and if they were to relocate abroad with the applicant. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994).

We will first consider the hardship claimed by the applicant's U.S. citizen spouse if she were to remain in the United States without the applicant. The applicant's spouse claims emotional, psychological and financial hardship if she were separated from the applicant.

In regards to emotional and psychological hardship, the applicant's spouse submitted a letter dated August 11, 2009 from [REDACTED] stating that the applicant's spouse had been under her care since that day for complaints of "feeling depressed," including unnamed increased stressors and difficulty sleeping. The doctor stated that the applicant's spouse was "evaluated and will be started on medication." No indication was given of what the doctor's diagnosis was, what was causing the applicant's spouse to feel depressed, what medication would be prescribed, and for how long the treatment would last. The actual prescription was not included. There is no evidence that the applicant's spouse's condition has affected her ability to work or carry on her daily activities.

Also in the record is a psychological assessment dated May 1, 2007 conducted by [REDACTED], a licensed psychologist. [REDACTED] stated that the applicant's spouse suffered from Adjustment Disorder with Mixed Anxiety and Depressed Mood, and Dyssomnia Not Otherwise Specified (NOS) and "will most probably benefit significantly from" her husband being granted legal residence in the United States, psychotherapy, learning English as a second language, and respect for her needs for "security and belongingness as a productive and caring [c]itizen of the United States." It is not clear from the record what steps the applicant's spouse took following this assessment to pursue the recommendations of the psychologist that were within her control, such as receiving psychotherapy or learning English. Because it is not clear what steps the applicant's spouse has taken to improve other areas of her life contributing to her emotional/psychological state, it not possible to conclude to what extent the applicant's inadmissibility contributes to her anxiety, depressed mood, and dyssomnia.

Additionally, in a letter dated July 30, 2009, the applicant's spouse states that one of her adult children underwent open heart surgery in 2009, however, no independent evidence was provided regarding her son's condition or the impact of that condition on her emotional/psychological health. The AAO gives due consideration to the opinions of the doctors, yet the assessment and letters generated do not show that, should the present application be denied, the applicant's spouse will experience emotional or psychological hardship that, when combined with other hardship

factors, is distinguishable from the common hardship experienced when a close family member is inadmissible.

In regards to financial hardship, the applicant states that his spouse will risk losing her home if the applicant no longer can contribute to the mortgage. As evidence, the applicant submitted notices from his mortgage company addressed to him and his spouse illustrating that they had not made payment on their mortgage for one month and thus owed \$1639 to the mortgage company. The applicant's spouse states in her letter dated July 30, 2009 that her monthly mortgage payment is \$656.00. No explanation is provided for why the applicant and his spouse had not paid their mortgage and it is not evident from the record that the applicant's immigration status affects the applicant's spouse's ability to pay the mortgage. The applicant's spouse also stated that she and her husband have four additional mortgages, four credit cards, and two bank loans, but no independent evidence is provided of that debt. The record also contains a sampling of the applicant and his spouse's household expenses from 2007. Letters submitted by the applicant indicate that both he and his spouse are both employed. Additionally, the record illustrates that the applicant's spouse has two adult U.S. citizen children and no indication is given in the record concerning why they are unable to assist the applicant financially. Not enough information is provided to make a conclusion that the applicant's spouse would suffer financial hardship due to the applicant's inadmissibility. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his spouse and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and, even when considered in the aggregate, does not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should she relocate to Mexico with the applicant. The applicant's spouse does not claim any specific hardship in regards to relocation to Mexico. Although she has longtime residence in United States, the record illustrates that the applicant's spouse is a native of Mexico and speaks Spanish as her primary language. The applicant has not addressed whether his spouse has family ties in Mexico, and the AAO is thus unable to ascertain to what the extent the applicant's spouse would receive assistance from family members in Mexico. Even were the AAO to take administrative note of the country conditions in Mexico, it is not clear how those conditions would negatively impact the applicant's spouse specifically. As such, the applicant has not met his burden in demonstrating that his qualifying spouse will suffer extreme hardship in the event that she relocates to Mexico.

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 his qualifying 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.