

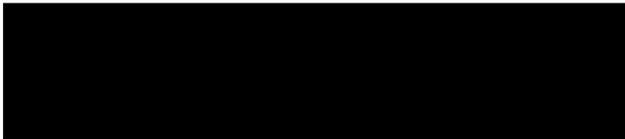
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



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Date: FEB 16 2012

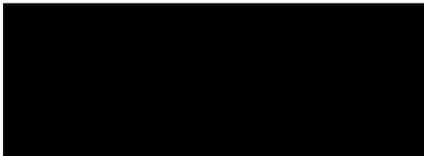
Office: MILWAUKEE, WI

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 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)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin. The matter 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and 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 husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated August 19, 2009.

On appeal, counsel contends that the applicant established the requisite hardship, particularly considering the applicant's husband has substantial family ties to the United States, has severe depression, and cannot afford to hire childcare for the couple's two children, one of whom has asthma. In addition, the applicant contends that she herself is suffering from depression.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on September 12, 2007; an affidavit from copies of medical records; a psychological report; articles and other background materials on Mexico; copies of tax returns, bills, and other financial documents; and letters from the applicant's and employers. The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien

would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that in February 2000, the applicant attempted to enter the United States by presenting a photo-altered Mexican passport with a nonimmigrant visa in another person's name. *Brief in Support of Appeal of Denial of I-601 Waiver*, dated October 19, 2009. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED], states that he is suffering from major depression. According to [REDACTED], the thought of his wife departing the United States is consuming his life. He states that his depression is causing him physical problems and that he has a history of neck problems. [REDACTED] contends his doctor found two lumps in his neck and that the lumps make him feel as though he is suffocating. In addition, [REDACTED] states that his own stress is worsened because his wife's high level of anxiety and emotional distress caused her to be admitted to the emergency room where she was diagnosed with heart palpitations. He states that her condition could worsen in Mexico due to the poor health care system there and that they would have no health insurance. Furthermore, [REDACTED] states that he works 60 hours per week in order to support his family and that his wife stays home with their two children. He states that without his wife, he would have to pay over \$1,200 per month for daycare which he cannot afford. [REDACTED] also contends that most of his family lives in the Milwaukee area, including his U.S. citizen father and his lawful permanent resident sister. Finally, [REDACTED] contends it would be impossible to move his wife and children to Mexico and expect to support them in Mexico the way he supports them in the United States. *Affidavit of* [REDACTED] dated January 8, 2009.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] will suffer extreme hardship if his wife's waiver application were denied. Although the AAO is sympathetic to the family's circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the financial hardship claim, there is insufficient evidence to show extreme hardship. Although [REDACTED] contends his wife is not currently working, *Affidavit of* [REDACTED], *supra*, the record contains a letter from the applicant's employer, stating that she has been a permanent, full-time employee since January 14, 2002. *Letter from* [REDACTED] [REDACTED] dated June 26, 2008. Even assuming the applicant has stopped working, [REDACTED] does not address who cared for the couple's two children when the applicant was working full-time, and he has not addressed the expense, if any, that was involved in the children's care. In addition,

although the record contains copies of some bills, there is insufficient evidence addressing the couple's regular, monthly expenses, such as rent or mortgage. Moreover, neither the applicant nor her husband addresses their two rental properties, for which, according to the couple's tax return, they received a total of \$10,400 in rent. *2007 Supplemental Income and Loss (Schedule E, Form 1040)*. Although the AAO does not doubt that Mr. Martin will suffer some financial hardship upon his wife's departure from the United States, the record does not show that his hardship will be extreme.

With respect to [REDACTED] depression, the psychological evaluation in the record primarily addresses research studies and describes the common, typical responses of being separated from a loved one. *Psychological Report*, dated December 16, 2008. As such, the record does not show that Mr. [REDACTED]'s separation from his wife is unique or atypical compared to other individuals separated as a result of inadmissibility of exclusion. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Furthermore, the only evidence addressing [REDACTED] neck problem is a copy of a radiology report, dated August 19, 2004, more than four years before the applicant filed her waiver application. This report fails to provide sufficient details addressing the diagnosis, prognosis, severity, or treatment required for [REDACTED]'s neck problem and there is no evidence showing that this problem is related to stress. Although the Psychological Report mentions [REDACTED] "history of headaches, and neck/back pain," and contends that "[t]he doctor told him that the lumps forming in his neck were related to stress," the psychologist does not address whether she evaluated [REDACTED]'s medical records or whether these statements merely summarize [REDACTED]'s self-reported symptoms.

To the extent [REDACTED] contends he suffers extreme emotional hardship because he worries about his wife and children, although the record contains copies of medical records, most of the records are illegible and there are no letters in plain language from any health care professionals. As such, there are no details addressing the diagnosis, prognosis, severity, or treatment required for the couple's son's purported asthma or the applicant's anxiety and heart palpitations. Notably, [REDACTED] does not mention his son's purported asthma in his statement addressing hardship. *Affidavit of [REDACTED]*, *supra*. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Therefore, even considering all of the evidence in the aggregate, there is insufficient information in the record to show that [REDACTED] would suffer extreme hardship if he decided to remain in the United States without his wife.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he returned to Mexico to be with his wife. The record shows that [REDACTED] was born in Mexico and according to the Psychological Report, one of his brothers continues to reside in Mexico. In addition, according to the applicant's Biographic Information form (Form G-325A), both of the applicant's parents continue to reside in Mexico. Therefore, [REDACTED] has some family ties remaining in Mexico. To the extent Mr. [REDACTED] contends he would be unable to support his family in Mexico the way he does in the United States, there is no evidence in the record showing that his hardship would be extreme, or unique or atypical compared to other individuals in similar circumstances. See *Perez v. INS, supra*. Considering

all of these factors cumulatively, the AAO finds that there is insufficient evidence to show that the hardship [REDACTED] would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *See* 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.