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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



H5

Date: **FEB 23 2012**

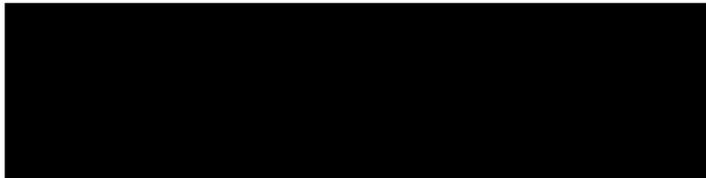
Office: LOS ANGELES

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:



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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of Mexico who attempted to procure entry to the United States in August 1995 by claiming to be a U.S. citizen. Specifically, during primary inspection, the applicant stated that she was born in San Diego, California. *See Form I-213, Record of Excludable Alien*, dated August 26, 1995. The applicant was thus 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 by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility on appeal. Rather, she is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 28, 2009.

In support of the appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal and a previously submitted psychological evaluation, dated June 29, 2009. The entire record was reviewed and considered in rendering this decision.

To begin, counsel asserts that the field office director erred in referring to documentation and statements not in evidence and speculating as to what happened at the border. *See Form I-290B*, dated October 12, 2009. The AAO notes that on appeal, counsel does not contest the ground of inadmissibility referenced by the field office director in his decision or alternatively, submit any evidence to rebut the field office director's findings.

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

- (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) of the Act provides that:

- (1) 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 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 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...

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 the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant or her three children, born in 1994, 1998 and 2007, can be considered only insofar as it results in hardship to a qualifying relative. 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 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.

Counsel asserts that the applicant's lawful permanent resident spouse will experience hardship were he to remain in the United States while his spouse relocates abroad as a result of her inadmissibility. To begin, counsel maintains that the applicant's spouse is the sole provider for the family and relies on the applicant to raise the children. Without her presence and daily assistance, counsel contends that the applicant's spouse will not be able to work 50 to 60 hours per week and continue to properly support and care for his children. Counsel further notes that the applicant and her spouse have been married since 1993 and long-term separation would cause the applicant's spouse hardship. *Brief in Support of 601 Waiver*, dated June 23, 2009. In support, counsel has submitted two evaluations from [REDACTED] dated January 24, 2007 and June 29, 2009. In [REDACTED] more recent evaluation, she maintains that the applicant's youngest children suffers from asthma and the applicant is the individual who cares for him and who manages his condition. She further asserts that the applicant's daughters rely on their mother and long-term separation from her would cause them hardship. [REDACTED] concludes that the applicant's spouse may be experiencing a clinical anxiety disorder and said anxiety may escalate to include serious mental decompensation and psychotic symptoms were his wife to relocate abroad. *Report from [REDACTED]*, dated June 29, 2009.

To begin, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluations are based on two interviews between the applicant's family and the psychologist, more than two years apart. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. In addition, no documentation has been provided from the applicant's spouse outlining the specific hardships he would experience were the applicant to relocate abroad. Moreover, no supporting documentation has been provided establishing the applicant's spouse's work schedule and their income and expenses to establish that they are unable to afford a caretaker for their children or that the applicant's spouse is unable to alter his work schedule should the applicant relocate abroad. Alternatively, it has not been established that the applicant is unable to obtain gainful employment in Mexico that would permit her to assist her husband and children financially in the United States. The AAO notes that the applicant has a diploma in Accounting from the Academia Tecnica de Ensenanza Mercantil in Mexico.

Further, no supporting documentation has been provided establishing the hardships the applicant's children would experience were the applicant to relocate abroad, to further support the assertion that the applicant's spouse will suffer hardship if the applicant were not physically present in the United States to help care for the children on a daily basis. Finally, it has not been established that the applicant's spouse would be unable to travel to Mexico, his native country, on a regular basis to visit his wife. 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 AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse will experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility.

With respect to relocating abroad to reside with the applicant due to her inadmissibility, counsel asserts that the applicant's spouse has been residing in the United States for most of his adult life and were he to relocate abroad, he would experience hardship in Mexico as a result of long-term separation from his community, his church, his friends, his gainful employment and his extended family. Further, counsel contends that were the applicant's spouse to relocate abroad, he would be faced with the prospect of losing his legal residence in the United States. Moreover, counsel maintains that Mexico is suffering an economic, political and social crisis with over 30% unemployment and were the applicant's spouse to relocate abroad, he would not be able to maintain his standard of living and his safety would be risk as a result of the high crime rate. *Supra* at 5-8.

The record reflects that the applicant's spouse has been residing in the United States for over 15 years. Relocating abroad to reside with the applicant would jeopardize the applicant's spouse's status as a lawful permanent resident of the United States. Moreover, the AAO notes that the U.S. Department of State has issued a Travel Warning for parts of Michoacán, Mexico, the applicant's birthplace, due to ongoing violence and persistent security concerns. *See Travel Warning-Mexico, U.S. Department of State*, dated February 8, 2012. Based on a totality of the circumstances, the AAO finds that relocating abroad to reside with the applicant would cause the applicant's spouse extreme hardship.

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 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(s) in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The application is denied.