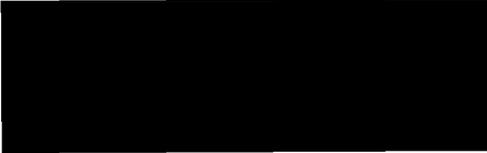


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prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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**

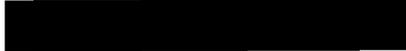


H5

Date: **FEB 24 2012**

Office: LOS ANGELES, CA

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. 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 for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and is the daughter of a lawful permanent resident mother and a U.S. citizen father. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her family in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated May 1, 2008.

On appeal, counsel contends that the field office director erred in concluding that the applicant failed to establish extreme hardship, particularly considering the applicant presented equities in her favor. In addition, counsel contends the field office director erred in making an adverse inference from the applicant's failure to include a declaration from her spouse and that the applicant's own testimony should have been deemed sufficient evidence to show extreme hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on [REDACTED] a declaration from the applicant; a declaration from [REDACTED] copies of tax returns and other financial documents; a letter from [REDACTED] employer; and an approved Petition for Alien Relative (Form I-130). 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 the applicant concedes, that in 1999, the applicant attempted to enter the United States by presenting a passport that was not her own. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act 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 and his wife have three children – one who is a U.S. citizen and the other two who are lawful permanent residents. [REDACTED] contends he earns \$32,000 per year and that if his wife departed the United States, not only would he have to hire day care services for the children, but the family would lose the \$12,000 his wife earns as a part-time housekeeper. According to [REDACTED] without his wife, he would not be able to pay the mortgage payments and could not afford childcare. He states that his wife takes care of the children and that she provides stability for their family. Furthermore, [REDACTED] states that even if his wife were deported to Mexico, it is in their children's best interest to stay in the United States because if they moved to Mexico with their mother, they would have to renounce all allegiance to the United States in order to attend school in Mexico.

The applicant states that her entire family has been able to obtain legal status in the United States. According to the applicant, her mother is a lawful permanent resident, her father is a U.S. citizen, and her five siblings are all lawful permanent residents or U.S. citizens. She states she no longer has any family in Mexico and that her entire family lives in the United States. In addition, the applicant states she works part-time as a housekeeper and that, with her husband's combined income, they are able to provide their three children with a safe home.

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 the record contains tax documents substantiating the applicant's claims regarding wages, there is insufficient evidence addressing the couple's regular, monthly expenses, such as mortgage. Although the AAO does not doubt that [REDACTED] will suffer some financial hardship upon his wife's departure from the United States, without evidence addressing the couple's expenses, there is insufficient evidence in the record to show that his hardship will be extreme. Regarding emotional hardship, the record does not show that [REDACTED] 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). 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] that he married the applicant in Mexico, and that they had two children in Mexico. According to [REDACTED] Biographic Information form (Form G-325A), his mother continues to reside in Mexico. Therefore, [REDACTED] has some family ties remaining in Mexico. To the extent [REDACTED] contends his children have more opportunities in the United States, there is no evidence in the record showing that his hardship would be extreme, 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.

Finally, the AAO notes that although the applicant contends she has a lawful permanent resident mother and a U.S. citizen father, there is no claim that either of her parents, who are also qualifying relatives under the Act, would suffer extreme hardship if her waiver application were denied.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative 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.