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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

PUBLIC COPY



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Date: **JAN 23 2012**

Office: HARLINGEN, TX



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 Acting Field Office Director, Harlingen, Texas. 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 a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated July 28, 2009.

On appeal, the applicant contends that section 212(a)(6)(C)(i) of the Act does not mention anything about the omission of a document and that she did not provide any fraudulent material or documentation in order to obtain any benefit from her husband. She contends she is only claiming a benefit of law as it relates to having a U.S. citizen daughter over twenty-one years old.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on September 16, 1987; a letter from the applicant; a letter from letters from the applicant's son and daughter; a letter from mother; a letter of support; copies of tax return statements, bank account statements, and other financial documents; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen daughter. 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 when she applied for a laser visa on or about February 19, 1999, she indicated to the American consulate that her marital status was single when she was, in fact, married to a lawful permanent resident. *Record of Sworn Statement on Affidavit Form*, dated May 15, 2009. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to procure an immigration benefit.

To the extent the applicant contends that she did not provide any fraudulent documentation to obtain a benefit from her husband, and that she is only claiming a benefit of law with respect to her U.S. citizen daughter, the AAO finds these contentions to be unconvincing. The applicant's misrepresentation regarding her marital status was made with respect to her application for a laser visa. The misrepresentation was material because it shut off a line of inquiry relevant to the applicant's eligibility for a laser visa, a non-immigrant border crossing card. Specifically, the applicant's laser visa application would likely have been denied had the consular officer known the applicant was married to a lawful permanent resident living in the United States. This misrepresentation is unrelated to any "benefit" the applicant may or may not be eligible for with respect to her daughter. The applicant's misrepresentation was made in 1999, ten years before her daughter filed a Form I-130 on her behalf. The fact that she did not make any additional misrepresentations for any other visa application is simply irrelevant. Accordingly, 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 states that her children are young and need her to take care of them. She states that she and her husband have been together for many years and have a strong relationship. In addition, the applicant contends she helps her elderly mother-in-law, taking her to the doctor and caring for her. She contends her entire family would suffer if she departed the United States. *Letter from* [REDACTED] dated May 29, 2009.

The applicant’s husband, [REDACTED], states that his wife takes good care of him, their children, and his elderly mother who is ill. He contends his wife takes his mother to medical appointments and helps her with everything she needs. He also states that he is always out of town for work and that his wife sold her own business in order for him to invest in his business. *Letter from* [REDACTED] dated May 28, 2009.

██████████ mother, ██████████ states that she has known the applicant for twenty-two years. She states the applicant takes her to doctor visits and the hospital, and that she does not know what she would do without her. *Letter from ██████████ dated May 20, 2009. See also Letter from ██████████ undated (letter from the applicant's daughter stating that her mother is the person who holds everything in place for the family); Letter from ██████████ undated (letter from the applicant's son stating that his mother helps him and the entire family with every problem).*

After a careful review of the record, there is insufficient evidence to show that ██████████ the only qualifying relative in this case, will suffer extreme hardship if his wife's waiver application were denied. Significantly, neither the applicant nor her husband discuss the possibility of ██████████ returning to Mexico, where he was born, to avoid the hardship of separation and they do not address whether such a move would represent a hardship to him. If ██████████ 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. Although the AAO is sympathetic to the family's circumstances, the AAO notes that the applicant's children are currently nineteen and twenty-four years old. Regarding ██████████ mother's purported medical problems, there is insufficient evidence in the record to show that the applicant's departure would cause extreme hardship to ██████████. There are no details addressing ██████████ health and no evidence in the record, such as a letter from a healthcare professional, to substantiate the claim that she requires the applicant's assistance. 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. Finally, the AAO notes that although the record contains financial documentation, the applicant has not explicitly made a financial hardship claim. In sum, the record does not show that ██████████ hardship is extreme or unique or atypical compared to other individuals separated as a result of inadmissibility or 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).

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.