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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

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DATE: **MAR 12 2012** OFFICE: LOS ANGELES, CA

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 Khew
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 applicant is a native and citizen of Mexico who has resided in the United States since November 28, 1996, when she entered without inspection. She was previously ordered excluded from the United States on November 25, 1996, after she attempted to procure admission using a border crossing card which did not belong to her. She was found to be inadmissible to the United States under 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 admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks 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 U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 30, 2009.

On appeal, counsel for the applicant contends the applicant has established that the familial, financial, and psychological impacts of separation amount to extreme hardship to the applicant's spouse. Counsel adds that the applicant merits a favorable exercise of discretion, given her positive equities and public policy favoring family unity.

The record includes, but is not limited to, statements from the applicant and her spouse, a psychological evaluation, evidence of birth, marriage, residence, and citizenship, financial and business documents, medical records, letters from family, friends, physicians, and employers, photographs, educational documents, other applications and petitions filed on behalf of the applicant, and evidence of exclusion proceedings. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

- (1) The [Secretary] may, in the discretion of the [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

[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.

In the present case, the record reflects that on November 20, 1996 the applicant attempted to gain admission into the United States by presenting a border crossing card which did not belong to her in the name of [REDACTED] to immigration officials. The applicant was ordered excluded from the United States on November 25, 1996, and admitted she subsequently entered without inspection on November 28, 1996. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

Counsel contends that separation of the applicant and her spouse would defeat the public policy goal of family unity, and emphasizes that the applicant has several family members in the United States. Counsel adds that the applicant’s spouse is experiencing psychological difficulties due to his concern over the applicant’s immigration situation. A psychological evaluation indicates that the applicant’s spouse experiences problems due to his mother’s extramarital affair, and that he does not know what he will do with the children if the applicant relocates to Mexico. Records show the applicant and her spouse have two U.S. Citizen children who are 13 and five years old. The evaluation also states that the spouse has feelings of anxiety and sadness, and relays the spouse’s predictions that he will suffer from economic constraints, lower living and psychological standards, solitude, severe levels of anxiety, depression, fear, and uncertainty without the applicant.

Counsel asserts that the applicant would not be able to find a job to support herself in Mexico, nor would any of her impoverished relatives in Mexico be able to help her financially. The applicant's spouse indicates that he and the applicant left Mexico to avoid poverty, and that if he were to return to Mexico, he would lose his job and given his age, health, and minimal education he would be unable to find a job and support the family financially. The record contains a 2005 letter from the spouse's physician stating that he has cysts on his left kidney.

Counsel also emphasizes the positive equities in the applicant's case such as the length of her stay in the United States, that she has significant ties to the United States including her U.S. Citizen children, and the fact that she has no other means to immigrate.

The record does not support a finding of financial hardship. U.S. Federal Income Tax Returns show the spouse's adjusted gross income for 2008 was \$59,762.00, which is above 125% of the minimum income level for a household of four or five as stated on the Form I-864P, Poverty Guidelines. The applicant has not submitted evidence on whether she could contribute financially to the household, either in the United States or in Mexico. Additionally, the record does not contain sufficient evidence of household expenses to support assertions of financial hardship. Without details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The record contains a psychological evaluation of the applicant's spouse. Therein, the evaluator discusses at length the spouse's emotional difficulties due to his knowledge of his mother's extramarital affair and his family history, stating only that the possible separation from the applicant is an additional burden. The evaluator also notes that applicant's spouse currently has feelings of anxiety and sadness, which may develop into more severe conditions if the spouse is separated from the applicant. Although the AAO acknowledges the applicant's spouse may experience some emotional difficulties given separation from the applicant, nothing in the record shows that his emotional/psychological hardship goes beyond that normally experienced by family members of inadmissible aliens.

The record contains a letter related to possible medical hardship experienced by the applicant's spouse. However, the 2005 letter from the spouse's physician discusses cysts which, in the physician's words, are not worrisome. This letter indicates that the spouse's medical condition is not severe, nor are there any additional letters from a treating physician showing that the spouse's medical condition has worsened, affects his quality of life, or requires assistance from the applicant due to his conditions. Without sufficient evidence, the AAO cannot conclude the applicant's spouse would experience hardship due to any medical conditions upon separation from the applicant.

Furthermore, the spouse's concerns over what to do with the two children if the applicant relocates to Mexico is not further explained. The applicant does not indicate why her spouse would be unable to provide financial support for her and the children if they relocate to Mexico, nor is there evidence to support assertions that the applicant would be unable to contribute financially if she

relocated. Moreover, the record lacks evidence on why the children could not remain in the United States with the applicant's spouse in the event of separation.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without his spouse.

The applicant has moreover failed to show that her spouse would experience extreme hardship if he relocates to Mexico with the applicant. Counsel discusses the role of country condition evidence in an analysis of extreme hardship; however, he fails to explain how country conditions in Mexico would specifically affect the applicant's spouse, and fails to submit sufficient evidence on objective country conditions, especially with respect to the area they would relocate to. Nevertheless, it is noted that the applicant's spouse is a native of Mexico, has lived in Mexico, and is familiar with the Spanish language.

The applicant's spouse adds that he would experience financial hardships in Mexico because he would not be able to find employment, and poverty is prevalent in Mexico. Although the spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, although counsel emphasizes that the applicant has developed significant ties in the United States, nothing in the record demonstrates how the spouse's family ties would cause him difficulties upon relocation. Again, the AAO acknowledges the applicant's spouse would experience difficulties if he were to move to Mexico with the applicant. However, because the record fails to provide sufficient evidence to show the familial, emotional, and financial impacts of relocation are in the aggregate above and beyond the hardships commonly experienced, the AAO cannot conclude the applicant's spouse would experience extreme hardship upon relocation 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 her U.S. Citizen 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.