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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**



H5

DATE: **MAR 22 2012**

OFFICE: SAN JOSE

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:

SELF-REPRESENTED

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,

  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Jose, California, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to obtain a benefit under the Act through fraud or misrepresentation. The applicant is married to a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. The applicant does not contest this inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director, September 29, 2009.*

In support of the appeal, the applicant submits a statement and supporting documentation, including, but not limited to: financial information; her husband's statement; birth certificates; and information about Mexico. The record also contains the applicant's Form I-485, Form I-601, and supporting documents. The entire record was reviewed and considered in rendering this decision.

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

Misrepresentation

- (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:

Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

- (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 [...].

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. resident spouse is the only qualifying relative in this case. 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.

The applicant's lawful permanent resident spouse contends he will suffer emotional and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. He claims to be stressed by thoughts of possible separation from the applicant, and notes fearing that her high cholesterol and elevated blood pressure will worsen if she lives in Mexico without him. *Statement of* [REDACTED] September 15, 2009. In the same document, the applicant's husband claims his wife is a substantial source of emotional and practical support, and declares having concerns both about the medical care available and the general level of personal safety in Mexico.

To begin, the record contains no supporting evidence concerning the emotional hardship that the applicant's husband states he will experience if separated from his wife, other than his own claims about feeling stress and the statement of the applicant herself in support of the waiver request. Further, he states being worried at the prospect of becoming a single parent, as well as about the impact on their children if the applicant returns to Mexico. No further documentation supports these claims. 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)). Without corroboration, these statements do not satisfy the applicant's evidentiary burden of showing hardship beyond the usual consequences of separation from loved ones. Nor has it been established that he would be unable to visit the applicant in Mexico -- where they both were born, married, and lived in [REDACTED] -- to ease the pain of separation.

As for the potential financial hardship claimed, there is no evidence regarding the applicant's contribution to household maintenance. Tax returns show that the qualifying relative only started filing jointly with the applicant in 2007, and his statement shows that her contribution was limited to taking care of paperwork for his gardening/landscaping business and homemaking. Both the applicant and her husband make the unsupported assertion that her absence will require him to hire someone to help with business accounting, as well as a nanny for the children, and that these expenditures will be difficult to sustain. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Nor has it been established that the 39 year-old applicant will be unable to support herself while in Mexico and require financial support from her husband, thereby imposing hardship on him. While the applicant has submitted country condition information about

Mexico dating to 1998, her husband's assertion that he would need to send her money due to poor employment prospects there is not backed up by evidence regarding the amount of economic support that will be needed. Similarly, there is no indication of the cost of the applicant's medications or her special diet, either in the United States or Mexico. Therefore, the applicant has submitted insufficient evidence of their overall financial situation to establish that, without her continued presence in the United States, her qualifying relative will experience financial hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. Although the specifics of each qualifying relative's situation may be unique, the situation of the applicant's husband, if he remains in the United States, is typical of individuals facing separation as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. It is the applicant's burden to provide evidence connecting the particulars of her husband's circumstances to the hardship claimed to result from separation. As the record lacks documentation of this claim beyond the qualifying relative's statement, the applicant has not met this burden.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the record contains little evidence allowing us to compare his ties to the United States with his remaining ties to Mexico.<sup>1</sup> We see evidence they have two children, ages 12 and 6, born here. Supporting his contention regarding reduced earning capacity and poor employment prospects in Mexico, the applicant's husband submits documentation of economic and living conditions there. He states that he is a self-employed laborer with limited schooling, and the record suggests that his business would not survive if he returned to Mexico. While observing that mere diminution in earnings does not comprise hardship that rises to the level of "extreme," *see, supra, Matter of Cervantes-Gonzalez and Matter of Pilch*, we note loss of a family business that is a going concern represents a significant adverse impact.

The applicant's husband points out his concern for his wife's physical safety in Mexico and for the children's health and welfare in a country where medical problems are associated with a problematic food and water supply. Personal safety issues are addressed by a U.S. Department of State (DOS) Travel Warning, which advises U.S. citizens to be mindful of security issues associated with the activity of Transnational Criminal Organizations (TCOs):

██████████ You should defer non-essential travel to the state of ██████████ except the city of ██████████ where you should exercise caution. [...] Extreme caution should be taken when traveling in the remainder of the state. [...] USG personnel may not travel outside the City of ██████████ after dark and must abide by a curfew of midnight to 6 a.m. within a secured venue.

*Travel Warning-Mexico, U.S. Department of State, February 8, 2012.*

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<sup>1</sup> A U.S. permanent resident since 1990, he claims to have no family left in Mexico to help him or his family relocate to Mexico; the record contains no details supporting the statement that all his family lives in the United States, such as the nature and number of his relatives, length of time here, proximity, et cetera.

We note that, in addressing danger concerns, although the applicant's husband does not state a fear of moving to a specific Mexican locale, his general contention that he fears the country is dangerous for his family is supported by the travel warning issued by the U.S. Department of State. Based on a totality of the circumstances, the AAO finds the applicant has established that her husband would suffer extreme hardship were he to move himself and his children back to the country where he has not lived for over 21 years (and where the U.S.-born children have never lived) in order to reunite the family with the applicant due to her inadmissibility. Accordingly, the AAO concludes the applicant has established that a qualifying relative would suffer extreme hardship were he to relocate abroad to continue residing with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her lawful U.S. resident spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant, the record fails to establish that the applicant's spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.<sup>2</sup>

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 waiver application is denied.

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<sup>2</sup> Nonetheless, we note a discrepancy in the record that would merit consideration were a discretion analysis warranted, as it bears upon credibility: the qualifying relative asserts in his detailed statement supporting the waiver application that he is a United States Citizen; however, not only is documentation lacking for this claim, but the record and available USCIS databases suggest that he has the same lawful permanent resident status obtained upon his December 1, 1990 U.S. admission.