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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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[Redacted]

DATE: **MAR 30 2012**

OFFICE: LOS ANGELES

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[Redacted]

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,

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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 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 procured admission to the United States through fraud or misrepresentation. 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 his parents.

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*, March 3, 2009.

In support of the appeal, the applicant's counsel submits no new information, but rather asserts that USCIS did not consider all evidence submitted. The record consists of the supporting documents submitted with the Form I-601 filed in 2002 and several additional items. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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. citizen father and U.S. resident mother are the qualifying relatives in this case.¹ If extreme hardship to a qualifying relative

¹ Although the appeal form also refers to "the wife," the only record mention of a wife appears in a marriage certificate showing that the applicant married on May 8, 2004. Absent from the record is any contention that the applicant's wife would suffer extreme hardship if the applicant were not permitted to remain in the United States.

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 record shows that the applicant sought U.S. admission through fraud or misrepresentation by using the valid green card of another person on February 9, 1997. It further shows that, upon withdrawing his application for admission the following day, the applicant was excluded from the United States. He later entered without inspection and has not departed.

The applicant's U.S. citizen father and lawful permanent resident mother contend they will suffer emotional and financial hardship if they remain in the United States while the applicant resides abroad due to his inadmissibility. The applicant's mother claims to experience stress by thoughts of possible separation from the applicant, and the record reflects her fears and her husband's concern that her health will deteriorate in the applicant's absence; she states that the applicant helps manage her Type 2 diabetes by making sure she eats properly and, in general, caters to her health needs. She also says that stress resulting from the applicant's deportation will worsen her high blood pressure and insomnia. *Statement of [REDACTED]* August 8, 2002. The applicant's father, too, reports that anxiety about his son's possible deportation is causing him difficulty sleeping, for which he is taking medication. *Statement of [REDACTED]* August 3, 2002. Both parents claim that their close-knit family unit will be harmed by the applicant's departure. In addition, they both state the applicant assists financially with household costs and by helping them pay several loan obligations.

To begin, the record contains no supporting evidence concerning the emotional hardship that counsel and the applicant's parents state they will experience if separated from their son, other than their own claims and those of their other seven children. The record reflects that the applicant's mother takes medication for diabetes, arthritis, and bone spurs, but it contains no documentation of her mental or emotional state. There is no indication that one or more of her other children cannot assist her as the applicant does. And, while the applicant provides documents listing his parents' medications, there is no clear, detailed explanation of the conditions they treat; although several listings refer to over-the-counter treatments for allergies and headaches, most are included without details as to the reason prescribed. The applicant's parents' statements, and the limited medical information provided, do not satisfy the applicant's evidentiary burden to show that his parents' emotional loss exceeds that normally associated with separation from loved ones. We note, too, that the qualifying relatives' statements indicate that the emotional support of their other children is readily available to help them overcome any sense of loss. Finally, the applicant has not established that either parent would be unable to visit him in Mexico to ease the pain of separation.

As for the predicted financial hardship, besides general reference in both parents' statements to the applicant providing financial support by helping with mortgage and car payments, there is no

evidence regarding his actual earnings contribution to household maintenance. The record contains a single 2000 tax return, but no bills or other documentation regarding either his parents' total expenses or the amount of his economic support. The record also establishes that the applicant's father contributed more than half of household income. We note that this earnings evidence is nearly ten years old. Under these circumstances, the applicant has submitted insufficient evidence of his parents' overall financial situation to establish that, without his physical presence in the United States, they will experience financial hardship. And, although the applicant's mother suggests that her son would have to receive financial help in Mexico, the record does not establish that the applicant will be unable to support himself in Mexico, the amount of parental financial help needed, or the economic burden this would impose on his parents.

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant, as he is the only one of their eight children not living here as either a U.S. citizen or permanent resident. However, the applicant has provided insufficient evidence to establish that the situation of his parents, if they remain in the United States, is not typical of individuals facing separation as a result of removal and rises to the level of extreme hardship based on the record. The applicant has not met his burden of showing that his parents would suffer hardship beyond the common results of removal or inadmissibility.

As regards establishing extreme hardship in the event a qualifying relative relocates abroad based on the denial of the applicant's waiver request, the record reflects that all of the applicant's siblings live in the same California town as their parents, with whom the applicant resides. Return of the applicant's parents to Mexico would, therefore, involve leaving seven children in order to stay close to one. We note the qualifying relatives' contention that their family enjoys a strong bond is supported by the submission by each of their children of a letter of support for the applicant's waiver application.

The applicant's mother indicates a willingness to accompany the applicant to Mexico, were it not for the suffering this would cause her husband and other children. The record does not show her medical conditions to be untreatable there, nor does she claim that her health will suffer if she relocates. Also absent is evidence that she has any U.S. earned income that would be lost or has any significant ties to the community besides her children. Similarly lacking is evidence of the applicant's father's U.S. ties, besides his children and his job. Regarding income, the applicant provides tax returns dating to 2000 showing that his father was the primary wage earner for a household that included the applicant's mother and the applicant. There is no evidence of any medical conditions that would burden his father's relocation to Mexico and neither parent claims to be unable to visit the other in Mexico from California, should either spouse elect to accompany the applicant.

While not unmindful that moving abroad would entail challenges, we note that based on the documentation in the record, considered in its totality, the applicant has not established that either of his parents would suffer extreme hardship were they to move back to the country where they lived until adulthood. Accordingly, the AAO concludes the applicant has provided insufficient evidence

to show that a qualifying relative would suffer extreme hardship were either one to relocate abroad to continue residing with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that either of the applicant's parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever an adult child is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardship they would face rises 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 waiver application is denied.