

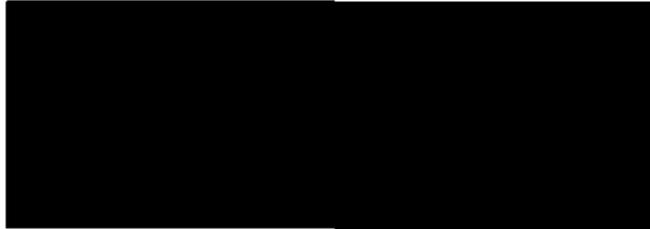
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

DATE: **MAY 23 2012** Office: MEXICO CITY, MEXICO

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 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 Field Office Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 sought admission through fraud or willful misrepresentation. She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 21, 2010.

On appeal, the applicant's spouse asks that United States Citizenship and Immigration Services (USCIS) reconsider its decision. *Form I-290B*, received May 18, 2010. He submits additional documentation in support of his assertions.

The record contains, but is not limited to, the following evidence: statements from the applicant's spouse, his children and other family members; a statement from [REDACTED], dated May 6, 2010, pertaining to the applicant's spouse; a copy of the applicant's spouse's 2009 tax return, his 2009 W-2 Wage and Tax Statement, and several of his earnings statements from 2010; photographs of the applicant, her spouse and their family; copies of a utility bill and mortgage statement; an employment letter for the applicant's spouse; and Spanish-language medical records for the applicant.¹

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) states in pertinent part:

- (i) 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 chapter is inadmissible.

The record indicates that the applicant presented a counterfeit Resident Alien Card (Form I-551) in an attempt to enter the United States on November 15, 2005. Based on her use of a fraudulent document to seek admission to the United States, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

¹ The AAO will not consider these records as they are not accompanied by the certified English-language translations required by 8 C.F.R. § 103.2(b)(3).

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s spouse states on appeal that separation from the applicant is causing him anxiety and depression. The applicant’s spouse also asserts that he feels lost and without purpose as a result of being separated from the applicant and that he suffers from insomnia and depression. He further states that he experiences side effects from the medication he takes to help him sleep, which worries him because he operates machinery at his place of employment and may harm himself or someone else. The applicant’s spouse also indicates that he suffers from gout, causing him joint pain, and that he needs the applicant’s help.

The applicant’s spouse states that his life is lonely as two of his children from his previous marriage are adults and he only sees his youngest child every other week because the child lives with his mother. He states that he and the applicant wish to establish a family, perhaps through adoption.

The record includes a number of statements from each of the applicant’s spouse’s children and from other family members that recount the applicant’s spouse’s struggle with depression after the end of

his first marriage and that indicate he is again experiencing depression as a result of his separation from the applicant. There is also a statement from [REDACTED] dated May 6, 2010, in which [REDACTED] reports that he is treating the applicant's spouse for gout. He states that the applicant's spouse's gout has resulted in some significant joint problems, and that he continues to adjust the applicant's spouse's medications. [REDACTED] also indicates that he has been treating the applicant's spouse for insomnia and depression, and is also adjusting his medications for these conditions.

The AAO finds [REDACTED] statement to demonstrate that the applicant's spouse has gout and is also experiencing some level of depression and insomnia, and will, therefore, give consideration to these conditions in reaching a determination in this matter. However, [REDACTED] brief statement is not sufficiently probative to establish the severity of the applicant's spouse's physical or mental health conditions, that they impair his ability to meet his daily responsibilities or that he, in any way, requires the applicant's assistance.

The applicant's spouse also states that he is experiencing financial hardship as a result of his separation from the applicant because he has financial obligations in the United States and must also pay for airline tickets and hotels when he visits. The record does not, however, support this claim.

The record contains the applicant's spouse's 2009 W-2 Wage and Tax Statement showing that he earned \$38,391 for the year and earning statements from 2010 indicating that his take home pay averages \$2,000 a month after deductions, which include child support payments. Evidence of the applicant's spouse's financial obligations consists of a 2009 mortgage statement establishing a monthly mortgage payment of \$383.46 and a utility bill from February 2009 showing a current balance of \$306.79 and a previous balance of \$153.97. No other documentation of the applicant's spouse's financial obligations is found. Based on this limited evidence, the AAO is unable to determine that the applicant's spouse is experiencing financial hardship as a result of his separation from the applicant.

Having considered the record, the AAO does not find the preceding hardship factors, even when considered in the aggregate, to demonstrate that the applicant's spouse would experience hardship beyond that normally experienced by spouses separated as a result of exclusion or removal. Therefore, the applicant has not established that her spouse would experience extreme hardship if the waiver application is denied and he remains in the United States.

On appeal, the applicant's spouse states that he would be unable to relocate to Mexico because he loves his children and must remain in the United States for them. He also asserts that he has responsibilities in the United States and must maintain his career in order to make his mortgage payments. The applicant's spouse further states that he has a job that pays well and provides him and his children with medical insurance.

The record contains sufficient documentation to establish that the applicant's spouse has three children from a prior marriage living in the United States, two of whom are adults. The applicant's

spouse's third child, who is 14 years-of-age, is living with his mother. It also establishes that, as previously indicated, the applicant's spouse makes monthly child support payments and that he claims the older of his two sons as a dependent for tax purposes. No documentation, however, establishes that the applicant's employment provides him with medical insurance for himself and his children.

The AAO acknowledges the emotional hardship that the applicant's spouse would experience if he were to be separated from his children in the United States and that relocation to Mexico would mean losing the job at which he has worked since 2000, thereby suspending, if not terminating, his financial obligations relating to his 14-year-old son.

When these specific impacts and the difficulties and disruptions that normally result from relocation are considered in the aggregate, the AAO finds the applicant to have established that her spouse would experience uncommon hardship if he joined her in Mexico.

The AAO, however, can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not demonstrated extreme hardship to a qualifying relative and is not eligible for a waiver under section 212(i) of the Act. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *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.