

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



115

DATE: NOV 26 2012 OFFICE: SAN BERNARDINO, CA

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:

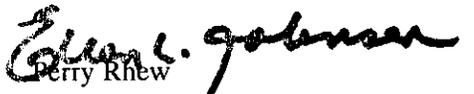
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, San Bernardino, 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, on May 18, 1997, presented a passport and a border crossing card which did not belong to him in an attempt to procure admission into the United States. He 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 son of a U.S. Citizen and is the beneficiary of an approved 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 reside in the United States with his U.S. Citizen father.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated August 9, 2011.

On appeal, the applicant indicates his 82 year old father is experiencing emotional and medical hardship given the present separation. He additionally asserts his father cannot relocate to Mexico due to the dangerous country conditions, high unemployment rates, and the lack of adequate medical facilities in that country.

The record includes, but is not limited to, statements from the applicant's father and family, evidence of attempted entries and removal proceedings, a psychological evaluation, documentation of birth, marriage, residence, and citizenship, other applications and petitions, and articles on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

.....
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the

United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission...

The record reflects that the applicant was ordered removed and returned to Mexico on May 22, 1997. The record additionally indicates that the applicant attempted to enter without inspection in 1999, and he was allowed to voluntarily return to Mexico. The applicant is therefore also inadmissible under section 212(a)(9)(C)(II) of the Act. An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. See *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States and USCIS has consented to the applicant's reapplying for admission. In the present matter, the applicant has not submitted documentation demonstrating that the 1999 departure was his last departure, and that he has remained outside the United States for 10 years. Once the applicant establishes the date of his last departure, in order to obtain an immigrant visa the applicant will need to have an approved Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

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 or about May 18, 1997 the applicant presented a passport with an I-551 stamp in the name of [REDACTED] to procure admission into the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United

States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. Citizen father.

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 applicant's father contends he is suffering from emotional and medical difficulties without the applicant present. The father explains he suffers from psychological pain and distress given the long separation from his son. A licensed clinical psychologist opines in an evaluation that the father has depression and anxiety based on family separation. The psychologist adds that the applicant's father is currently undergoing treatment for hypertension, high cholesterol, and tachycardia.

The applicant's father asserts he would also experience extreme hardship upon relocation to Mexico. He explains he is retired, counts on his social security and medicare benefits to survive, and would have to forgo those benefits in Mexico. The father adds that he would have to seek out new medical providers in Mexico, and would have to pay out of pocket for those costs. The father indicates he was born in the United States, is familiar with the language and customs here, and that he fears returning to Mexico due to the dangerous country conditions. Letters from the father's two other sons, indicating that the father would be unable to travel to Mexico due to his health.

The applicant claims his father's health will deteriorate unless he is present to help take care of him. However, the record reflects that the father's two other sons live with him, and that in particular, his son [REDACTED] assists him and takes care of him. The psychological evaluation indicates that the applicant's father relies on Aureliano for daily care and transportation. As such, documentation of record does not demonstrate that the father's needs with respect to daily living are unmet without the applicant. Furthermore, although the psychological evaluation indicates the father suffers from hypertension, high cholesterol, and tachycardia, the record lacks documentation from the father's medical services provider with details about the severity of his complete medical condition and how it affects his quality of life to allow an assessment of his medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance

needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's father would suffer as a result of the applicant's inadmissibility. It is again noted that even if the record contained such documentation, the applicant has not demonstrated that those needs are unmet by his two other brothers who reside with the father.

The record reflects that the applicant's father suffers from some emotional and psychological hardship without the applicant present. While the AAO acknowledges that the applicant's parent 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 medical, emotional, or other impacts of separation on the applicant's parent 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 remains in Mexico without his parent.

The applicant has also failed to demonstrate that his father would experience extreme hardship upon relocation to Mexico. As discussed above, the record lacks sufficient evidence of the father's medical conditions, as well as supporting documentation to show that the father would be unable to obtain treatment for those conditions in Mexico. Although assertions on medical conditions 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)). Furthermore, although the applicant submits articles on violence in Mexico, including an article reporting that the U.S. Department of State has renewed its travel warning on Mexico, the current U.S. Department of State travel warning indicates that no advisory is in effect for Guanajuato, Mexico, where the applicant was born and currently resides. The record moreover lacks evidence to support assertions that the father would be unable to live in Mexico due to his financial situation, and that his family could not assist him financially.

The AAO notes that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the parent's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's parent are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's parent relocates 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 his U.S. Citizen parent 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 a 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.