



U.S. Citizenship
and Immigration
Services

[Redacted]

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Date: OCT 23 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 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,

Maria Feh

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen Mexico, the spouse of a lawful permanent resident of the United States, and the beneficiary of an approved Form I-130 petition. 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 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 family.

The District Director concluded the applicant had not demonstrated that denial of the waiver application would result in extreme hardship to a qualifying relative as described in section 212(i) of the Act, and denied the application accordingly. *Decision of the District Director*, dated December 22, 2006

The AAO, reviewing the applicant's I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated August 2, 2010. Consequently, the appeal was dismissed. *Id.*

The applicant submitted the Form I-290B, Notice of Appeal or Motion, on September 4, 2010.¹ On the motion to reopen, counsel for the applicant submits a *Travel Warning for Mexico from the U.S. Department of State*, and two newspaper articles from the Los Angeles Times regarding violence in the State of Jalisco, Mexico.²

The record includes, but is not limited to, statements on Form I-290B, Notice of Appeal or Motion; U.S. Department of State Travel Warning for Mexico, newspaper articles, counsel's appeal brief, statements from the applicant and her husband, letters of support for the applicant and her family, tax documents, a psychological evaluation of the applicant's husband, neuropsychological documentation for the applicant's son, and an individualized education program assessment on the applicant's son. The entire record was reviewed and considered in arriving at a decision on the appeal.

¹ The regulation at 8 C.F.R. §103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The AAO notes that the instant motion does not contain the statement required by this regulation.

²The instructions for Form I-290B, with respect to motions, clearly state,

Although a petitioner may be permitted additional time to submit a brief and/or evidence to support an appeal, no such provision applies to motions. Any additional evidence must be submitted with the motion.

In this particular case, the applicant's attorney did not submit his brief in support of motion to reopen and motion to reconsider, and additional evidence, together with the Form I-290B. The applicant's attorney submitted his brief and additional evidence under a cover letter dated February 14, 2011, more than five months after submitting the Form I-290B, and thus cannot be considered as a part of the record.

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 indicates that on January 14, 1996, the applicant attempted to enter the United States by presenting another individual's Resident Alien Card (Form I-551) and was denied admission. On or about January 18, 1996, the applicant entered the United States without inspection. On August 12, 2004, the applicant filed a Form I-601. On December 22, 2006, the District Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's use of another person's resident alien card in an attempt to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar would impose an extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences as a result of her inadmissibility is not directly relevant to a determination of extreme hardship in a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children would suffer if she were to be denied admission to the United States. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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.

In regard to the hardships that the applicant's spouse may encounter if he is separated from the applicant, the AAO previously found that the record failed to establish extreme hardship to the applicant's husband if he remains in the United States. The AAO noted that with respect to the applicant's claim that her spouse would suffer medical hardship, other than statements from counsel and a psychological evaluation, no medical documentation has been submitted establishing that the applicant's husband is suffering from any medical conditions. In regard to financial hardship, the AAO stated that the record contained no documentation that establishes the applicant's husband's expenses in the applicant's absence, and the record also failed to offer proof that the applicant's husband would be unable to afford childcare to assist him in meeting his parental responsibilities.

Counsel contends that the AAO decision should be reconsidered because the AAO did not address the psychological evaluation submitted with the applicant's initial waiver application, and submitted to the AAO on appeal. The results of the psychological evaluation were addressed with respect to the physical health conditions of the applicant's spouse. In the evaluation, the psychologist states that the applicant's spouse was in jeopardy of emotional harm should he be separated from his wife, and that such separation could result in an acute adjustment disorder with depressed mood, resulting in disturbances in sleep and appetite, irritability, and poor concentration and memory. The AAO notes that these diagnoses are speculative in nature. The evidence in the record is insufficient to conclude that the qualifying spouse is experiencing emotional and psychological hardship that rises to the level of extreme, as contemplated by the statute.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regard to relocation, on motion to reopen, counsel submitted evidence in the form of an updated Travel Warning on Mexico from the U.S. Department of State, and newspaper articles from the [REDACTED]. In its previous decision, the AAO noted that the record indicated that the applicant and her husband were born in the central state of [REDACTED] and that on March 14, 2010, the U.S. Department of State issued a travel warning related to the violence in Northern Mexico, specifically the area along the United States-Mexico border. Counsel submitted the Travel Warning on Mexico, dated July 16, 2010, which indicated that, at that time, the number of violent incidents had increased in recent months throughout the state of [REDACTED]. The AAO notes that since the July 16, 2010 travel warning on Mexico was issued, the U.S. Department of State issued a more recent travel warning, dated February 8, 2012. With respect to the state of [REDACTED] this recent travel warning states that U.S. citizens should defer non-essential travel to areas of the state that border the states of [REDACTED]. Thus, based on the evidence on the record, the applicant has established

that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Jalisco, Mexico to reside with the applicant.

We 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. 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 relatives in this case.

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 application remains denied.

ORDER: The motion to reopen is granted and the waiver application remains denied.