



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **APR 15 2013**

Office: LOUISVILLE, KY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Louisville, Kentucky. The matter 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering that her husband's mother has cancer and his entire family resides in the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, statements from the applicant; statements from statements from mother and other family members; letters from mother's physician and copies of medical records; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; copies of tax returns and other financial documents; letters of support; copies of photographs of the applicant and her husband; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant entered the United States in January 1996 using a visa by claiming she was married to [REDACTED]. However, the record shows that the applicant was not married to [REDACTED]. The applicant contends that at the time she applied for a visa in 1994, she was living with [REDACTED] who is the father of her children and who worked at the Mexican Consulate in Phoenix, Arizona. According to the applicant, she told the secretary at the Mexican Consulate in Phoenix, Arizona, that she was single, but the preparer marked that she was married and told her not to worry about it. The applicant states she relied on [REDACTED] and the preparer to complete the application correctly and that she had no intention of misrepresenting a material fact in order to procure an immigration benefit.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds the applicant has not met her burden of proving she is admissible to the United States. The record shows that in 1994, the applicant was thirty years old and the mother of two children. According to the applicant herself, she told the secretary who completed her visa application that she was single, but the secretary “listed ‘married’ on the application form and told [her] not to worry about it.” Therefore, the applicant knew at the time of the application that her marital status was incorrectly listed as married when she was not, in fact, married. Although the applicant claims she is unfamiliar with the visa application process and relied on others, she was an adult who understood that her marital status was misrepresented on the visa application. Her claim that she trusted the secretary is insufficient to overcome the fact that she misrepresented a material fact. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 this case, the applicant's husband, [REDACTED] states that he was born with asthma and still suffers from breathing problems. According to [REDACTED], he gets bronchitis very easily and if left untreated, it could turn into pneumonia. In addition, [REDACTED] states that he has been a recovered drug addict for the past fifteen years. He states that without his wife, he fears the depression and stress would make him fall back into drug use. Moreover, he states that over two years ago, his mother broke her knee in three places and is currently fighting breast cancer. According to [REDACTED] his mother

lives with him and he was solely responsible for assisting her, which required him to take time off from work to take her to appointments, do all the housework, and care for all of her personal needs. He states he financially supports his mother and that his sisters cannot afford to support her. [REDACTED] states that his wife now helps him care for his mother, helping her get dressed, taking her to the bathroom, helping her take a shower, and doing all the household chores, cooking, and laundry. In addition, [REDACTED] states that he has grown very attached to his wife's children and grandchildren, including his wife's son who is fourteen years old, has a cleft palate, and suffers from Kawasaki disease which affects his large intestine. Without regular treatments, the disease would kill him, according to Mr. [REDACTED]. Furthermore, [REDACTED] contends he cannot relocate to Mexico to be with his wife. He states that moving would mean selling his house at a loss which would ruin his credit. He also contends he cannot afford moving expenses and would have to hire a full-time caregiver for his mother. He contends he has a good job and has been working for the same company since 2005. In addition, he states his entire family lives in the United States and he has no relatives in Mexico. He states he cannot speak Spanish and would, therefore, have a very difficult time finding a job in Mexico. He also contends the pollution in Mexico would make it even more difficult to breathe and it would be hard to obtain medical coverage there.

After a careful review of the record, the AAO finds that if the applicant's husband, [REDACTED] relocated to Mexico to avoid the hardship of separation, he would experience extreme hardship. The record shows that [REDACTED] was born in the United States and the AAO acknowledges his contentions that he does not speak Spanish and that his entire family resides in the United States. In addition, the AAO recognizes [REDACTED] reluctance to leave his mother who resides with him and the record contains documentation corroborating his claim that she is fighting breast cancer and had knee surgery in 2009. In addition, the AAO acknowledges [REDACTED] contention that he has worked for the same employer since 2005 and that relocating to Mexico would mean leaving his employment and all of its benefits. Considering these unique factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to Mexico to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the couple's circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding his claims that he has asthma and other medical issues, and is a former drug addict, there is no evidence in the record to corroborate these claims. There is no evidence in the record that [REDACTED] has ever been diagnosed with any physical or psychological problems, and no evidence he requires his wife's assistance in any way. As such, there is no evidence showing that his emotional hardship would be unique or atypical compared to others separated from a spouse. With respect to his claim that he would no longer have his wife to help him care for his mother, there is insufficient information in the record to show the extent of assistance his mother requires. Although the AAO recognizes she is fighting breast cancer and had problems with her knee, according to the most current documentation in the record, she has completed chemotherapy and radiation, "tolerated her treatment without interruption[,] . . . has done very well," and the only follow-up recommended was to have mammograms twice a year for two years and once a year

thereafter. With respect to [REDACTED] mother's injured knee, the most recent medical report, dated September 7, 2010, indicates she "is independent with activities of daily living" and felt she could return to work with some modification. In any event, according to [REDACTED] himself, he had previously been solely responsible for caring for his mother and the record does not show that resuming caring for his mother amounts to extreme hardship. To the extent [REDACTED] feels attached to the applicant's children and grandchildren, and regarding the claim that his stepson suffers from Kawasaki disease, there is no evidence in the record to corroborate this claim. In addition, notes from the applicant's adjustment of status interview indicate the applicant's children live in Arizona and there is no indication addressing what, if any, connection they have to [REDACTED]. In sum, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that [REDACTED] would suffer extreme hardship if he decided to remain in the United States without his wife.

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 applicant's husband, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *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.