



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 25 2013 OFFICE: SAN BERNARDINO, CALIFORNIA

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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California, denied the waiver application. The applicant, through previous counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On January 22, 2013, the applicant, through current counsel, filed a motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

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 attempted to procure admission to the United States through willful misrepresentation. The Field Office Director concluded the applicant failed to establish her parents were qualifying relatives as defined by the inadmissibility waiver provisions of the Act, or that extreme hardship would be imposed upon a qualifying relative and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO found on appeal that the applicant established her parents were qualifying relatives but affirmed the District Director's decision that the applicant failed to establish extreme hardship would be imposed upon her qualifying relatives.

On motion, counsel contends the AAO applied an erroneous legal standard and abused its discretion because the applicant provided sufficient evidence to establish extreme hardship to her lawful permanent resident parents. Counsel also contends the U.S. Citizenship and Immigration Services (USCIS) did not have the opportunity "to review the totality of the evidence supporting a finding of extreme hardship." See *Brief in Support of Motion*, dated January 18, 2013.

The record includes, but is not limited to: a brief, a motion, and correspondence from current and previous counsel; letters of support from the applicant's parents and pastor; and identity, medical, employment, financial, and academic documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, 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 Act is inadmissible.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having attempted to procure admission to the United States around 1989, by presenting a lawful permanent resident card that did not belong to her. On motion, the applicant does not contest this finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now Secretary of Homeland Security (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.

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. Hardship to the applicant or her adult son and daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident parents are the only demonstrated qualifying relatives in this case. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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 support of the applicant’s motion, counsel contends the AAO erroneously applied the law to the facts in the present matter upon considering the factors relevant in determining extreme hardship as indicated by the BIA in *Matter of Cervantes-Gonzalez*, *supra*, as the applicant’s parents would suffer extreme economic, emotional, and physical hardship in the applicant’s absence: they reside with the applicant and depend on her for their basic necessities; they would be unable to provide for themselves given their advanced age and their limited income; the applicant would be unable to find a comparable job in Mexico, thereby resulting in her inability to support herself and to provide for her parents; her parents would feel “great anguish” as she does not have any close relatives in Mexico, and she would be separated from her entire family to live in a country she left over 20 years ago with no moral, family, or financial support; the applicant’s parents are experiencing recent medical issues, and although the applicant “did not present an extensive medical record” to support her claim of hardship to her parents, she provided “a letter from their physician and affidavits from each [parent] attesting to the extent of their medical impediments”; the applicant’s father is suffering from hypertension and her mother is suffering from depression because of the denial of the applicant’s waiver application; her family members would be separated from one another after residing together for over two decades; her parents would be unable to travel to Mexico because of their age and illnesses, resulting in “great sadness that coupled with the anxiety issues they already suffer would result in severe forms of depression and suffering”; and her parents would fear for her safety in Mexico, given the violence affecting all of its regions. Counsel also contends: the applicant’s son and daughter would be deprived of the applicant’s love, affection, and emotional support, which would affect the applicant’s parents, as they would have to witness the separation of a nuclear family; and the applicant’s son and daughter would not follow her to Mexico as they are adult U.S. citizens, thereby, resulting in a permanent separation and breakup of their family.

Counsel further contends “the most important factor that needs to be considered in determining hardship is preservation of family unity and prevention of [the] break-up of [the] family relationship that is imminently caused by relocation of one of its members” (citing *Gutierrez-Centeno v. INS*, 99 F.3d 1529, 1533 (9th Cir. 1996); *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983); *Cerillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987); *United States v. Arrieta*, 224 F.3d 1076 (9th Cir. 2000)). In its previous decision, the AAO acknowledged that the applicant’s case arises within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, and duly noted the Ninth Circuit’s observations concerning the preservation of family unity as a central factor in an extreme hardship determination. Also in its previous decision, the AAO further cited the Ninth Circuit’s holding in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998): “the most important single hardship factor may be the separation of the alien from family living in the United States,” and “[w]hen the BIA fails to give considerable, if not predominant weight to the hardship that will result from family separation, it has abused its discretion.” Accordingly, the AAO gives due consideration to family separation in the present matter.¹

Although the applicant’s parents may experience some hardship in the applicant’s absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. On appeal, the AAO determined the record established the applicant’s parents have received monthly benefits from the Social Security Administration since December 2008, totaling \$534. However, the AAO noted the record was unclear concerning the applicant’s current employment status and income, and the record did not include any evidence of the applicant’s parents’ financial obligations or their inability to meet those obligations in the applicant’s absence. The AAO further noted the record lacked evidence of labor or employment conditions in Mexico and the applicant’s inability to contribute to the maintenance of her and her parents’ households. On motion, the record does not include sufficient evidence to address these matters. The AAO is thus unable to conclude the applicant’s parents’ hardship would go beyond that which is commonly expected.

On appeal, the AAO determined the record is sufficient to establish Dr. [REDACTED] diagnosed the applicant’s father and mother with hypertension and depression, respectively, as well as prescribed the applicant’s mother with a daily medication. However, the AAO previously noted the diagnoses are primarily based on self-reported information as the applicant’s parents were new patients of Dr. [REDACTED] as of October 31, 2011,² and the record does not include any additional medical records demonstrating the applicant’s parents’ physical and mental health. Also on appeal, the AAO noted the record lacked a discussion of the specific course of treatment for the applicant’s father’s hypertension and the evaluative method used to make a diagnosis of the applicant’s mother’s depression. On motion, the record does not include sufficient evidence to address these matters. Absent an explanation in plain language from the treating physician of the nature and severity of any condition and a description of

¹ In its previous decision, the AAO distinguished the individual’s circumstances in *United States v. Arrieta, supra*, from the applicant’s circumstances in the present matter as the cited case involved an individual who was found to have been prejudiced by a due process violation during deportation proceedings, and that the Immigration Judge failed to inform the individual of his eligibility for relief for a 212(h) waiver of inadmissibility, of which it was plausible that he could have received.

² The AAO notes, that on appeal, it erroneously referred to the date as “December 31, 2011.”

any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed.

The AAO notes the concerns regarding the hardship the applicant's parents may experience in the applicant's absence, but finds that even when evidence of this hardship is considered in the aggregate, the record fails to establish the applicant's parents would suffer extreme hardship as a result of separation from the applicant.

The AAO notes, in its previous decision, it determined the applicant's parents would experience extreme hardship upon relocation to Mexico because of their length of residence and strong ties to the United States, they maintain their lawful permanent residence status, the current social conditions in Mexico, along with the normal hardships associated with relocation. The AAO notes the applicant's parents' circumstances have not improved since the AAO's previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's parents would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to qualifying relatives in the scenario of separation *and* the scenario of relocation. A claim that qualifying relatives 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. In Re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to her parents in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her lawful permanent resident parents as required under section 212(i) of the Act. As the applicant has not established extreme hardship to qualifying family members, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for 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 motion will be granted and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted. The previous decision of the AAO is affirmed. The application remains denied.