

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: Office: LOS ANGELES, CA
AUG 14 2013

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, § U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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 seeking to procure a visa, admission into the United States or other benefit provided under the Act by willful misrepresentation.¹ The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 16, 2009.

The AAO affirmed, finding the applicant did not submit sufficient evidence demonstrating his U.S. citizen spouse would experience extreme hardship given his inadmissibility and dismissed the appeal. *See AAO Decision*, December 19, 2012.

On motion, submitted by counsel on January 22, 2013 and received by the AAO on April 1, 2013, counsel submits articles on country conditions in Mexico, documentation of income and expenses, letters from the spouse's employer and therapist, and a brief. In the brief, counsel contends the applicant's spouse would experience financial, family-related, and psychological difficulties without the applicant present. Counsel moreover asserts the spouse would be subject to dangerous country conditions in either [REDACTED], where the applicant was born, or in [REDACTED], where the applicant's spouse was born.

Counsel also submits copies of other AAO decisions. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions submitted by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

The requirements for a motion to reconsider is set forth in 8 C.F.R. § 103.5(a)(3). This regulation states, in pertinent part, that "[a] motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services] policy." *Id.* The requirements for a motion to reopen are delineated in 8 C.F.R. § 103.5(a)(2). This regulation states,

¹ As noted on appeal, the applicant was additionally found excludable by an Immigration Judge on August 29, 1996, and removed on the same date. Consequently, he requires an approved Form I-212 Application for Permission to Reapply for Admission into the United States (Form I-212). The applicant's Form I-212 was denied in a separate decision and has not been appealed.

in pertinent part, that “A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.” Counsel has stated new facts on motion, and provided additional documentary evidence. The AAO will therefore grant the applicant’s motion to reopen.

The record contains, but is not limited to, the documents listed above, statements from the applicant, his spouse, and other individuals, financial records, documentation of birth, marriage, residence, and citizenship, documents related to immigration and criminal proceedings, as well as various immigration applications and decisions. The entire record was reviewed and considered in rendering a decision on the motion.

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.

In the present case, the record indicates that on August 25, 1996, the applicant attempted to enter the United States with a Form I-586, Border Crossing Identification Card which did not belong to him that was issued to [REDACTED]. He was placed into exclusion proceedings, and was found excludable pursuant to section 212(a)(7)(A)(i)(I) of the Act as an intending immigrant not in possession of valid admission documents. The applicant was excluded and returned to Mexico on August 29, 1996 and testified during his interview for adjustment of status that he reentered the United States on the same date, using a Mexican passport which was not lawfully issued to him. Inadmissibility is not contested on motion. Based on the foregoing, the AAO affirms the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and requires a waiver under section 212(i) of the Act.

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

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant’s spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver

and the 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 1292 (9th Cir. 1998) (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.

On motion, counsel claims the applicant's spouse would experience safety-related concerns if she relocated to [REDACTED] Mexico, and to [REDACTED] Mexico. Articles on country conditions in those areas are submitted on motion. Counsel contends although the travel warning discussed in the AAO's decision indicates there is no warning against travelling in that state, the areas surrounding it have been declared to be dangerous, and that [REDACTED] has since become the epicenter of violence in Mexico. Counsel moreover adds that the spouse's parents and siblings all live in the United States as citizens or permanent residents, indicating that separation from those family members will cause the spouse emotional hardship.

Counsel additionally contends the spouse would experience financial and psychological difficulties upon separation from the applicant. Counsel explains that the spouse's income as a teaching assistant at [REDACTED] is insufficient to meet her and her children's financial needs, given that the spouse is an hourly employee and she only works 180 days per year, which is when the school is in session. Counsel states the applicant's income is necessary to meet their financial obligations, including their \$1400 per month mortgage payment. Documentation on the applicant's and the spouse's income as well as a budget worksheet is submitted on motion. Counsel also submits a letter from a psychologist. The psychologist states in the letter that she has individual therapy sessions with the applicant's son, as well as weekly collateral sessions with the applicant's spouse. The psychologist reports the spouse presents with excessive, uncontrollable worrying which interferes with her daily functioning, and she additionally presents with fatigue, headaches, muscle tension, difficulty breathing, irritability, difficulty concentrating, twitching, sweating, insomnia, and an inability to control her worrying.

The applicant has failed to supplement the record with sufficient evidence of hardship upon relocation to Mexico. Counsel submits two articles on violence in [REDACTED] to demonstrate the applicant's spouse would experience safety-related concerns in that city. These articles do not clearly indicate [REDACTED] is currently a dangerous place for U.S. citizens. One article reports [REDACTED] has not seen the level of drug-related cartel violence as other areas, and the other article opines [REDACTED] may lose its protected status and become, in the future, an epicenter for drug-related violence. In contrast, the latest U.S. Department of State travel warning reiterates the statements made in its previous travel warning, indicating, "[t]here is no recommendation against travel to [REDACTED] and [REDACTED]. There is also no recommendation against travel on principal highways in [REDACTED] between [REDACTED] including the portions that cross in to the southern portions of the state of [REDACTED]" U.S. Department of

State travel warning, July 12, 2013. Although the AAO acknowledges the U.S. State Department has issued a travel warning on [REDACTED] Mexico, the applicant has not indicated he and his spouse will relocate there instead of [REDACTED]. Counsel has made no additional claims or submitted more documentation on insufficient educational or economic opportunities in the event of relocation.

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 spouse'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, safety-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

The applicant has additionally failed to demonstrate his spouse would experience extreme financial and emotional hardship in the event of separation. Counsel contends the spouse's income from her teaching assistant position at the [REDACTED] is insufficient to meet her financial obligations and pay for her and her children's living expenses without the applicant's assistance. Documentation on the spouse's employment at the [REDACTED] where she works during the 180 day school year is submitted. The AAO notes this income itself would be insufficient to make the mortgage payments of approximately \$1400 a month. However, counsel has failed to supplement the record with evidence demonstrating the applicant's spouse does not still receive the \$30,000 stipend she previously received, and that she is not benefiting from other educational grants. Moreover, the applicant has not submitted supporting evidence, such as copies of household bills, documenting most of the expenses listed on the "monthly / yearly expenses" worksheet. Without documentation on the claimed expenses and any additional income, the AAO is unable to evaluate the financial difficulties the spouse would experience without the applicant's monetary contributions.

The record reflects the applicant's spouse would suffer some emotional difficulties, such as anxiety and worry, as well as family-related hardship raising her two children without the applicant present. However, we do not find evidence of record to demonstrate that her 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 financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without his spouse.

The AAO consequently finds that 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 spouse 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.