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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **DEC 24 2013**

Office: TAMPA, FL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 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
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application and the matter 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 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 lawful permanent resident and is the daughter of a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband, children, and father 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 that the applicant's misrepresentation regarding her marital status was not material because she had other avenues to adjust her status. Moreover, counsel asserts that the applicant established extreme hardship, particularly considering her husband was diagnosed with cancer and HIV infection, the couple has 4 U.S. citizen children, and her father is elderly and illiterate.

The record contains, *inter alia*: a statement from the applicant; a statement from the applicant's husband, Mr. [REDACTED] a statement from the applicant's father, Mr. [REDACTED] a letter from the applicant's employer; copies of medical records; copies of pay stubs and other financial documents; 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 pertinent part:

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, and the applicant concedes, that on her first Form I-485, she stated that she was single when, in fact, she was married. This Form I-485 was filed based on a Form I-130 filed by her father on August 31, 1992, which was approved on December 15, 1992. The record shows that on May 24, 2012, the applicant's father withdrew the Form I-130 because he was "no longer eligible to petition for [his] daughter as an unmarried child, because [she] was married in Mexico before she arrived in the U.S." As a result of the withdrawal, the Form I-485 was denied on May 31, 2012. The record reflects that on September 5, 2012, the applicant's daughter filed a Form I-130 naming the applicant as the beneficiary, and the applicant filed a second Form I-485 based on her daughter's petition. On this second application, the applicant indicated her marital status as married. The record contains a sworn statement from the applicant taken during her interview for her second adjustment application indicating that she stated she was single even though she was married on her first adjustment application because she knew she would not qualify for permanent residency if she was married.

Counsel contends the applicant's misrepresentation is not material because she had other avenues to adjust her status at the time. According to counsel, even if the applicant made an intentional misrepresentation, she would have been eligible to secure a visa even if the true facts had been known.

Counsel's contention is unpersuasive. The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961), as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

In this case, the applicant's misrepresentation is material because she was not eligible to adjust her status as an unmarried child of a lawful permanent resident at the time she made the misrepresentation. Therefore, she was excludable on the true facts. While she may have had other avenues, she chose not to pursue them until the misrepresentation was disclosed. At the time she applied to adjust status based on her father's petition she had no other petitions filed and, therefore, had no other avenue to adjust her status. The fact that the applicant subsequently admitted to her misrepresentation during her interview for her second adjustment application does not eradicate her previous misrepresentation. Accordingly, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting 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.

After a careful review of all of the evidence, the record establishes that if the applicant's husband or father relocated to Mexico to avoid the hardship of separation, they would experience extreme hardship. With respect to the applicant's husband, Mr. [REDACTED] the record contains copies of his medical records that show he has had numerous medical problems, including, but not limited to: Hodgkin disease which was treated with six cycles of chemotherapy in November 2006; HIV infection that was diagnosed in 2001; Candidiasis esophagitis and microscopic hematuria, related to HIV disease; and recurrent pneumonia since 2006. According to his physician, Mr. [REDACTED] remains at risk for a second cancer and the presence of HIV infection exacerbates this risk. Relocating to Mexico would disrupt the continuity of his health care and the U.S. Department of State acknowledges that although adequate medical care can be found in major cities in Mexico, standards of medical training, patient care, business practices, and the availability of emergency responders vary greatly and may be below U.S. standards. *U.S. Department of State, Country Specific Information, Mexico*, dated October 16, 2013. With respect to the applicant's father, Mr. [REDACTED] the record shows that he is currently seventy-five years old and that he has been a permanent resident of the United States since 1988. Mr. [REDACTED] would need to readjust living in Mexico after having lived in the United States for the past twenty-five years. Furthermore, the U.S. Department of State has issued a Travel Warning for Mexico and recommends deferring non-essential travel to the state of Michoacan, where the applicant, her parents, and her husband were born. *U.S. Department of State, Travel Warning, Mexico*, dated July 12, 2013. Considering the unique factors of this case cumulatively, the record establishes that the hardship the applicant's husband and father would experience if they relocated to Mexico is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, both Mr. [REDACTED] and Mr. [REDACTED] have the option of staying in the United States and the record does not show that either of them would suffer extreme hardship if they were to remain in the United States without the applicant. Although the AAO is sympathetic to the family's circumstances, if they decide 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. There is insufficient documentation in the record to support Mr. [REDACTED] contention that he cannot care for the couple's four children without his wife and that he needs his wife's help financially to maintain their home. Although the record contains copies of the applicant's pay stubs and a letter from her employer, there is no evidence addressing Mr. [REDACTED] wages, income, or employment in the record. In addition, there is no evidence in the record addressing the family's regular, monthly expenses, such as rent or mortgage. Furthermore, the record shows that the couple's children are currently between fourteen and twenty-three years old. According to a Form I-864 in the record, the couple's oldest child is living at home and earning \$19,760 as a Medical Receptionist; however, the applicant has not addressed to what extent, if any, their eldest child contributes financially to the household. Without more detailed information and evidence addressing total income and expenses, there is insufficient evidence in the record to determine the extent of Mr. [REDACTED] financial hardship. To the extent Mr. [REDACTED] has numerous health problems, there is no

suggestion in the record that he requires his wife's assistance in any way due to any health condition. With respect to emotional hardship, the record does not show that either Mr. [REDACTED] or Mr. [REDACTED] hardship would be extreme, unique, or atypical compared to others separated as a result of inadmissibility or exclusion. See *Perez v. INS*, 96 F.3d 390 (9th 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). Moreover, according to Mr. [REDACTED] Biographic Information form (Form G-325A), dated December 17, 2011, he has lived in Dallas, Texas, since 2003 while the applicant's Form G-325A indicates that she and her family have lived in Florida since 2005. Neither the applicant nor her father has addressed the extent to which they see each other. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if Mr. [REDACTED] or Mr. [REDACTED] remain in the United States, the hardship either of them will experience amounts to extreme hardship.

Extreme hardship warranting a waiver of inadmissibility can be found 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 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, the record does not establish that refusal of admission would result in extreme hardship to the applicant's husband or father.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband or father caused by the applicant's inadmissibility to the United States. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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.

ORDER: The appeal is dismissed.