

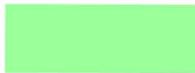


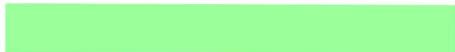
(b)(6)



DATE: **FEB 28 2013**

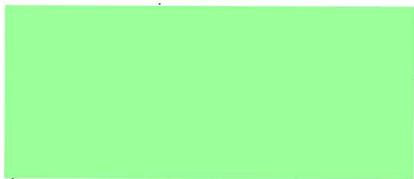
Office: TUCSON, AZ

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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.

f.s.
Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Tucson, Arizona, and 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 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 or an immigration benefit through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated March 6, 2012.

On appeal, counsel for the applicant asserts that the Field Director failed to consider fully the emotional hardship the qualifying spouse would suffer if the applicant's waiver application were denied. *Counsel's Brief*.

The record includes, but is not limited to: a statement from the qualifying spouse; a psychological evaluation; letters from the applicant's step-daughters, employer, mother-in-law, and friends; school records for the applicant's step-daughters; financial records; and country conditions information. 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) 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.

(b)(6)

In the present case, the record reflects that during an interview regarding his adjustment of status application, the applicant testified that he began residing unlawfully in the United States in September 2005 and that he regularly traveled between the United States and Mexico without carrying his Border Crossing Card. He further testified that he was apprehended by Border Patrol agents on September 3, 2005, July 24, 2006, and June 7, 2007 when attempting to enter the United States without inspection. He was not carrying his Border Crossing Card on any of those occasions and each time he informed the Border Patrol agents that he had no documentation allowing him to be present in the United States. He also failed to inform the agents that he was living and working unlawfully in the United States. He testified that he lied to the agents because he feared that his Border Crossing Card would be revoked if he were found to have violated its terms. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure an immigration benefit in the United States through misrepresentation of a material fact. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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 to his children can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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 U.S. 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

(b)(6)

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 v. INS*, 138 F.3d 1292, 1293 (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 appeal, the applicant submitted a psychological evaluation regarding his qualifying spouse and step-daughters. The evaluation indicates that the qualifying spouse considers the applicant to be a devoted husband and step-father who plays an important role in the family. He provides for the family financially and also gives emotional support. The evaluation also notes that the qualifying spouse has felt worried, sad, and depressed regarding the possibility that the applicant may have to return to Mexico. The qualifying spouse fears that it would be difficult for her to meet her financial obligations on her own and that she and her daughters would suffer emotional hardship in the applicant's absence. She also fears that she and her daughters would face a lower standard of living in Mexico, with fewer employment and educational opportunities and inferior healthcare. Additionally, the qualifying spouse is concerned about the violence in Mexico and fears that she and her daughters would have trouble assimilating into Mexican society. Finally, the qualifying spouse has no close family ties in Mexico and does not want to be separated from

(b)(6)

her family and friends in the United States. The evaluation concludes that the qualifying spouse is experiencing "moderate to high levels of emotional distress characteristic of depressive symptoms" and that she and her daughters would continue to suffer such distress if they were separated from the applicant or if they were to relocate to Mexico. See *Psychological Evaluation*, [REDACTED] Ph.D., dated April 30, 2012.

The AAO finds that the qualifying spouse would suffer extreme hardship if she were to relocate to Mexico. The record reflects that the qualifying spouse was born and raised in the United States and that she has close family ties here. Adjusting to life in Mexico, particularly when separated from her family and friends, would be very difficult for her. Additionally, the qualifying spouse shares custody of her four daughters with her ex-husband, so relocation to Mexico may force her to be separated from her daughters. In the aggregate, these factors would create extreme hardship for the qualifying spouse on relocation. See *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996).

However, the AAO finds that the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship on separation from the applicant. The AAO recognizes that the qualifying spouse has experienced sadness and worry regarding the possibility that the applicant will be required to return to Mexico. However, such emotional difficulties are a common result of separation from a close family member and do not rise to the level of extreme hardship necessary for a waiver. Although counsel also asserts that the qualifying spouse would experience financial hardship in the applicant's absence, there is no evidence in the record to support that claim. Additionally, while the qualifying spouse fears that her daughters would experience sadness if they were separated from the applicant, her daughters are not qualifying relatives for purposes of a waiver under section 212(i) of the Act, so hardship to them can only be considered insofar as it affects the qualifying spouse. Although the qualifying spouse's daughters have expressed that they value the applicant's presence in their family, there is no indication that the qualifying spouse would be unable to care for them on her own or that they would experience such emotional difficulty in his absence that it would cause extreme hardship for the qualifying spouse.

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 spouse in this case.

In proceedings for an 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 appeal will be dismissed.

ORDER: The appeal is dismissed.