

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: JAN 07 2013

Office: SALT LAKE CITY, UT

FILE: [REDACTED]

IN RE: [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 PETITIONER:
[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, Salt Lake City, Utah. 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 Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is married to a legal permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her legal permanent resident husband, one legal permanent resident son and two U.S. citizen sons.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated November 19, 2010.

On appeal, the applicant's attorney asserts that the applicant provided sufficient evidence to demonstrate that her qualifying spouse would suffer extreme hardship if her waiver application is not granted.

The record contains two Applications for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); a brief and letters written on behalf of the applicant; relationship and identification documents for the applicant, qualifying spouse and their children; affidavits from the qualifying spouse, the applicant and her mother; letters from their children, friends and employers; psychological evaluations of the applicant's spouse and their son; country conditions documentation; financial documentation; and denied Applications to Register Permanent Residence or Adjust Status (Form I-485). 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.

The record indicates that the applicant was admitted into the United States when she presented a border crossing card, which was issued to her after she represented herself as a Mexican citizen and resident to U.S. consular officials, in 1990. Counsel concedes that the applicant knew that, as a Guatemalan citizen, she was not entitled to use the border crossing card to enter the United States. However, counsel explains that the applicant's mother created a new identity for the applicant when she was young to protect her, because the family was in danger as a result of the applicant's mother's political activism.

An alien is inadmissible under section 212(a)(6)(C)(i) of the Act when she makes a willful misrepresentation of a material fact in order to obtain an immigration benefit. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The Board of Immigration Appeals (BIA) has held that a misrepresentation made in connection with an application for visa or other documents, or for 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 result in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The applicant provided evidence to show that she used her false identity before her entry into the United States, and that such identity was given to her by her mother for safety reasons. Border crossing cards, however, are only issued to applicants who are citizens and residents of Mexico. If the applicant had claimed her true identity as a Guatemalan citizen when she requested a border crossing card, she would have been ineligible for it because of her citizenship. The applicant's use of her false identity as a Mexican citizen to obtain a border crossing card shut off a line of inquiry, which would have otherwise resulted in a finding of ineligibility. The applicant's misrepresentation renders her inadmissible under the Act. As such, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and 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 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.

The applicant must first establish that her legal permanent resident spouse would suffer extreme hardship if he were to remain in the United States while the applicant resides in Guatemala due to her inadmissibility. The applicant's spouse states that he depends upon the applicant for emotional support. He also indicates that without his spouse's love and support, his "job as a parent would be next to impossible." He also describes the assistance that the applicant provides to their sons. While the record contains two psychological evaluations regarding the qualifying spouse and one of their sons, the record does not contain supporting documentation or details regarding the nature of the emotional support that the applicant provides or how the necessity for such emotional support goes beyond the ordinary consequences of separation. In fact, the psychological evaluation regarding the qualifying spouse concludes that he is not "suffering from significant symptoms of depression" and that their son is "not experiencing significant adjustment difficulties but does worry" about his family if his mother were to be deported. While the psychological evaluations indicate that the applicant's spouse and child could develop significant mental health issues, the reports do not show that either is prone to having mental health problems or to demonstrate that it is likely that they would have significant psychological issues.

The applicant's spouse indicates that the applicant's return to Guatemala would have a severe financial impact on himself and their children because she pays for the children's college expenses, healthcare costs, clothing and miscellaneous expenses. However, while the record contains financial documentation, including tax returns for 2008 and 2009, banking statements and one bill, the documents do not indicate the amount of income that the applicant contributes to their family or that her inability to work in the United States would affect the qualifying spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse also indicates that he would suffer as a result of witnessing their children's emotional, financial and educational hardships caused by their separation from the applicant. However, the record does not indicate how this hardship is outside the ordinary consequences of removal. Further, it is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the children will not be separately considered, except as it may affect her spouse. The applicant failed to provide sufficient evidence to establish that her qualifying spouse would suffer emotional or financial hardships as a result of separation from the applicant that, considered in the aggregate, are extreme.

However, the applicant has demonstrated that her qualifying spouse, a native of Mexico, would suffer extreme hardship in the event that he relocated to Guatemala to be with the applicant. The record corroborates claims that the qualifying spouse's children all live and have status in the United States. The qualifying spouse also asserts that he has several aunts and cousins live in the United States, and

that he has very close relationships with these family members. The record also indicates that the applicant's spouse does not have family or friends in Guatemala and that he has resided in the United States for over twenty years. Further, the record reflects that the qualifying spouse has established a specialized career in the United States in mechanics and that he has maintained long-term employment in the United States that he would lose upon relocation. The record also contains documentation regarding safety concerns in Guatemala. As such, the cumulative effect of the hardships to the qualifying spouse, in light of his family ties to the United States, his lack of ties to Guatemala, loss of employment and length of residence in the United States, 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 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 relative in this case.

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. *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.