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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date:

JAN 10 2013

Office: CALIFORNIA SERVICE CENTER

IN RE :

Applicant:

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,


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Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her lawful resident parents.

The Service Center Director found that the applicant failed to establish that her qualifying relatives would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Director* dated February 6, 2012.

On appeal counsel for the applicant asserts the Service erred when it found that the hardship to the applicant's parents did not rise to the level of extreme hardship. With the appeal counsel submits a brief; psychological evaluations and medical documentation for each parent; financial documentation; property and rental information for the applicant's siblings; school documentation for the applicant's daughter; and country information for Mexico. The record also contains previously-submitted declarations from the applicant's parents, siblings, and daughter. 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, in pertinent part:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 parents are the only qualifying

relatives 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. *Salcido-Salcido v. INS*, 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.

Counsel asserts that the applicant's parents are elderly and in poor health and that the applicant provides them with room and board. Counsel contends the applicant's parents depend on the applicant as their four other children in the United States are unable to house the parents because of space and financial problems and that most of their 15 grandchildren are minors unable to provide economic support for their grandparents. Counsel asserts that the parents' monthly fixed income is not enough for their expenses without the applicant's assistance. Counsel further contends that if the applicant returns to Mexico and her parents relocate with her they would live in Tepic, Nayarit where they have a son. Counsel asserts that in Nayarit the applicant's parents would fear violence and that U.S. citizens are targeted. Counsel also contends that if the applicant returns to Mexico it would cause distress to the parents who would fear for her safety.

The psychological evaluations by a clinical psychologist indicate the applicant's parents suffer some depression and that their emotional health may deteriorate without the applicant. The applicant's father reported having anxiety and worry, and noted that the applicant takes care of his spouse and him. The therapist recommends therapy to identify the anxiety triggers, a support system and outpatient mental health services. The therapist recommends against the applicant's parents relocating to Mexico because of their fragile mental health and leaving their community behind. The evaluation indicates the applicant's mother is terrified of moving to Mexico and that she may deteriorate emotionally and physically without applicant's support. The evaluation states she was experiencing loss of appetite, felt depressed and sad, and that medication helps with depression. The evaluation states the applicant's parents fear that if the applicant returns to Mexico they will have to move out of the house to get their own place to live. It further notes the parents' family and support networks are in the United States and that they are afraid for the applicant to live in Mexico because of kidnappings and murders.

In the parents' statement the applicant's father stated that he suffers from high blood pressure and cholesterol, cataracts, and insomnia and that he depends on family support, especially from the applicant. The applicant's mother stated that she suffers from high blood pressure, beginning osteoporosis, and back pain, and is battling depression. She also stated that as she becomes dizzy and falls she needs the applicant because she cannot be left alone. The parents stated that the applicant takes them to medical appointments, that they cannot afford to live on their pensions without the applicant, and they stated in the psychological evaluation that they fear the applicant's spouse cannot afford to help them if he is sending money to the applicant in Mexico. The parents further stated that life in Mexico would be difficult for the applicant and that if they returned with

her they cannot work as they are both retired with medical problems and would not have money for private medical doctors in Mexico.

The applicant's siblings submitted statements that they are unable to care for parents because of lack of space. In her declaration the applicant's daughter stated that she needs applicant's presence as she is a single mother.

The applicant has established that her qualifying relative parents would experience extreme hardship were they to relocate to reside with the applicant. The record shows most of the parent's family is in the United States, where the parents receive medical care and retirement incomes. U. S. Department of State information for Mexico indicates medical facilities in more remote areas is limited and that U.S. health insurance in nearly all situations does not provide coverage for hospital or medical costs in Mexico. Further, Department of State travel advisories for Mexico indicate that non-essential travel in many parts of the state of Nayarit should be deferred and that the security situation is unstable north of Tepic where travelers could encounter roadblocks or shootouts between rival criminals.

The AAO finds, however, that the applicant has failed to establish that her qualifying parents will suffer extreme hardship as a consequence of being separated from the applicant. The applicant submitted evidence that her parents suffer depression and anxiety, but did not show how such emotional hardships are outside the ordinary consequences of removal.

The applicant's parents state that due to their health problems they depend on family, particularly the applicant. However the record does not show the parents are otherwise unable to get to medical appointments, given their large family in the area. Medical documentation shows the applicant's parents suffer some illnesses and treatable conditions, but nothing so severe that care and treatment depends on the applicant's presence in the United States.

The applicant's counsel and parents indicate that the applicant provides financially for the qualifying parents by giving them a place to live. However, the record shows that the applicant's parents have four other adult children and 15 grandchildren and they receive a regular income. Although the applicant has submitted documentation showing the difficulty her siblings would have housing their parents, the record does not establish that the parents would have nowhere to live without the applicant, given that they receive an income and considering the applicant and her spouse are purchasing the home where they and the parents are living. The record does not show the income of the applicant's spouse to establish that without the applicant's income he would be unable to continue living in the home where the parents are also living. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

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 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 relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 her qualifying parents 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.