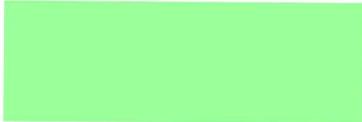


(b)(6)

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

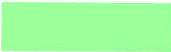


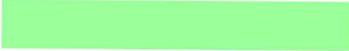
U.S. Citizenship  
and Immigration  
Services



DATE: JUL 22 2013

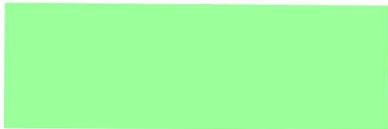
Office: LOS ANGELES

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant is seeking a waiver of inadmissibility in order to reside in the United States as the beneficiary of the Petition for Alien Relative (Form I-130) filed by her mother.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, November 22, 2011.

On appeal, counsel for the applicant contends that USCIS erred in misconstruing the hardships that the applicant's mother will face as a result of the applicant's inadmissibility, if she is unable to remain in the United States. In support of the appeal, counsel submits a brief and an updated hardship statement. The record contains documentation including, but not limited to: hardship statements; naturalization and birth certificates; medical progress notes and laboratory results; diplomas and education certificates; financial information, including bills for household expenses, income data for the applicant dated not later than 2000, and bank statements; translated and untranslated Spanish-language documents; and documentation regarding an Application for Asylum and for Withholding of Deportation (Form I-589). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

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 [...].

The applicant claims that, when she sought assistance getting a U.S. work permit in the 1990s, the individual who helped had her sign a blank document and then filed an application for temporary protected status (TPS) listing her nationality as "Salvadoran." Although immigration records do not

show the applicant filed an Application for TPS (Form I-821), they confirm that she represented her nationality as "Salvadoran" on a Form I-589 bearing her signature dated November 17, 1995.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The record establishes that on at least three separate occasions, the applicant declared that she was born in El Salvador. Specifically, the Form I-589, executed by the applicant under penalty of perjury on November, 17, 1995 outlined that she was born in El Salvador. In addition, the Form I-765, Application for Employment Authorization, signed under penalty of perjury on November 16, 1995 and a fingerprint card signed on November 15, 1995 list the applicant's country of birth as El Salvador.

The applicant, on multiple occasions, signed documentation, under penalty of perjury, outling a country of birth and nationality/citizenship that was not in fact true, in order to obtain asylum in the United States. The applicant had the duty and the responsibility to review all forms and statements (and obtain translations if any questions on the forms were not clear to her) prior to signing. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i)(1) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen mother 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems impacting her mother does not represent hardship that rises to the level of "extreme." The record shows that the qualifying relative came to the United States in the 1980s and was able to obtain permanent residence under the Immigration Reform and Control Act of 1986. Medical records do not substantiate her claim that a 1996 car accident has caused her ongoing complications, including mobility problems. The records consist of laboratory results and physician's "progress notes" for medical care since 2002. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant

factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's mother suffers from such a condition. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's mother. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. There is insufficient evidence to show that any required treatment is unavailable in Mexico, and the AAO notes the record establishes that the qualifying relative travels to her native country to obtain affordable health care for her conditions.

Besides living here with her daughter, the only indication of the qualifying relative's U.S. ties are a letter regarding church membership and her 2011 naturalization. There is no information about relatives or other contacts remaining in Mexico, or of any adverse consequences of moving there to remain together with the applicant. While we are sensitive that returning to her native country might be disruptive for the qualifying relative, the applicant fails to meet her burden of showing circumstances that would make this other than a typical result of removal or inadmissibility. The record reflects that, as she is retired and receiving social security benefits, and travels to Mexico for medical care, relocating would not deprive her of a job, income, or continuity of care. Without evidence showing how relocating will adversely impact her mother, the applicant cannot show hardship that rises to the level of "extreme." We thus conclude that, were the applicant unable to reside in the United States due to her inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship if she relocated to live with the applicant.

Regarding physical or emotional hardship due to separation from the applicant, the record lacks documentation that her mother will experience any problems beyond the inconvenience of not having a family member for companionship. There is no evidence substantiating the qualifying relative's claim that she requires her daughter's presence for meal preparation, transportation, and household chores, nor does that applicant's mother demonstrate the unavailability of friends, relatives, or social services to help out in her daughter's absence. As noted previously, the medical evidence is insufficient for us to draw conclusions regarding whether any condition of the applicant's mother requires her to have special assistance. While we are sensitive that separation from her daughter will impose some hardship on the qualifying relative, the record reflects no special circumstances or evidence that separation would result in hardship beyond the common results of removal. Further, there is no evidence the applicant's mother would be unable to visit her daughter in Mexico to ease the pain of separation.

Regarding the financial component of separation hardship, counsel for the applicant asserts that the applicant's mother relies on her for financial stability. There is, however, no documentation less than 13 years old of the applicant's income, no forms proving her mother's income from social

security or other sources,<sup>1</sup> and no evidence of the qualifying relative's living expenses dated after 2001. The latest documentation available – three bank statements from 2011 -- demonstrates that the qualifying relative ended the three-month period with an account balance over twice as large as she had at the outset. Nothing on record reflects that the applicant's mother is presently experiencing economic problems or that her daughter's inability to remain here would make her unable to meet her financial obligations. There is thus no indication that the applicant's departure would impose economic hardship on the qualifying relative.

For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's mother will experience due to the applicant's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were her mother to remain in the United States without the applicant due to her inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has not established that a qualifying relative will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's mother will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her mother as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed

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<sup>1</sup> While a "\$609.17" deposit amount appears from several ledger entries on the qualifying relative's bank statements to represent a direct deposit of social security benefits, the applicant bears the burden of showing that loss of the applicant's income is likely to cause hardship. Without documentation of current income, the applicant cannot meet this burden.