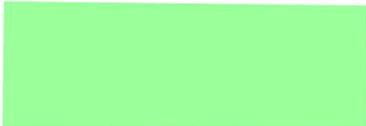


(b)(6)

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

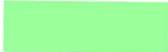


U.S. Citizenship
and Immigration
Services

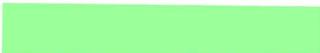


DATE: **JUL 22 2013**

Office: EL PASO

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 (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,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, El Paso, Texas, 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 his stepson.

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, October 12, 2012.*

On appeal, counsel for the applicant contends that USCIS erred in misconstruing the extreme hardships that the applicant's wife will suffer as a result of the applicant's inadmissibility if he is unable to remain in the United States. The record contains documentation including, but not limited to: hardship and supportive statements; a naturalization certificate and a green card; birth, divorce, and marriage certificates; financial information, including a tax return and pay stubs, utility bills, and a mortgage statement; two immigrant petitions and documentation pertaining to adjustment of status processing. 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 field office director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure permanent residence by filing an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the spousal petition of a U.S. citizen despite already being married to another person. Immigration records show that the applicant entered the United States without inspection or parole in 1991, married a U.S. citizen in Texas on December 19, 1996, and filed Form I-485 concurrently with his wife's Form I-130 immigrant petition on January 21, 1997. This application was denied for abandonment on March 15, 2002. The record also reflects that the applicant had married his current wife on November 23, 1990, that this marriage was never

terminated, and that this wife is the qualifying relative in the case before us. In 2012, the existence of the two marriages came to light during processing of the applicant's Form I-485 based on an approved I-130 filed by the qualifying relative's son on behalf of his stepfather, the applicant. The field office director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on the applicant's willful misrepresentation in failing to divulge the prior marriage when applying for adjustment of status in 1997.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful U.S. resident spouse 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-Moralez*, 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 his wife represents hardship that rises to the level of “extreme.” The applicant provides no evidence for his counsel’s assertion that the qualifying relative had been residing for many years in the United States before becoming a permanent resident in 2012 and no indication when she left Mexico, but she states that she has no relatives and nowhere to go in Mexico, and documentation reflects that the applicant owns the El Paso home in which he lives with his wife and their 20-year-old daughter. There is also evidence his wife has a 26 year old child from another relationship -- the stepson-petitioner of the applicant – who lives nearby.

We note that the qualifying relative claims to have no family members remaining in Mexico and to be fearful of great danger there. She cites frequent shootings and kidnappings in Ciudad Juarez, where her husband was born and maintained a business at one time. She notes the family’s El Paso body shop (or used car lot) was burglarized in 2011, and claims the perpetrators were from Ciudad Juarez. Whether or not her perception is correct, U.S. government reporting advising U.S. citizens against travel to the state of Chihuahua, and specifically mentioning Ciudad Juarez, substantiates the qualifying relative’s safety concerns. *See Travel Warning—Mexico*, U.S. Department of State, November 20, 2012. We thus conclude that the problems the applicant’s wife would experience upon relocating go beyond the common or usual consequences of inadmissibility or removal, and thus establish that a qualifying relative would suffer extreme hardship by departing the country to live with the applicant abroad.

Regarding the claim of emotional hardship due to separation from the applicant, the record shows that the applicant and the qualifying relative married on November 23, 1990 in Mexico; they had a child in 1992; at some point he left for the United States and married another woman in Texas without divorcing his first wife; he separated from his second wife after three years and claims to have returned to Mexico; and he claims to have reunited with his first wife in the United States in 2009. There is no documentation supporting the qualifying relative's claim to have formed a strong family unit with her husband, or any indication that separation would impact her differently than did the prior lengthy period of time apart. Without evidence that she would be adversely affected by her husband's departure, in view of their history of living apart, the applicant has not shown that she would suffer emotional hardship that rises to the level of "extreme." There is no evidence she would be unable to visit her husband to ease the pain of separation from a loved one.

Regarding the financial component of separation hardship, documentation indicates that the applicant became the family breadwinner in early 2012. Before that time, the record reflects that household income was from a small family business. While the couple's joint 2011 tax return shows nominal income from that used car sales business, the applicant's wife contends based on two pay stubs showing earnings of over \$7,000 for April 2012 that the applicant has annualized income of \$86,000. There is no employment letter or contract guaranteeing this job or salary, the record indicates this was the applicant's first month in this job, and there is no employment or earnings history to substantiate the projected income claimed. The record reflects that, when the family fell behind on some of its bills due to cash flow problems in the family business, the applicant took his new job to supplement earnings from car sales. The qualifying relative claims to be unemployed and doing volunteer work for over three years, but offers no reason other than personal choice for not pursuing gainful employment. There is nothing on record showing that she and her adult child living at home are unable to work and generate income toward household expenses. Based on the record, the AAO is unable to conclude that the applicant's inability to remain here would make his wife unable to meet her financial obligations.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's wife 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 his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

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.

The documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife 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 husband as required under the Act.

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.