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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: OFFICE: PHOENIX, ARIZONA

File: [Redacted]

JUN 04 2013

IN RE:

Applicant: [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 APPLICANT:

[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 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 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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, 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 pursuant to 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 through willful misrepresentation. The applicant is the spouse of a lawful permanent resident and 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, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The District Director concluded the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated April 17, 2008.

On appeal, counsel asserts: the applicant provided sufficient evidence of the hardship her spouse would suffer if her waiver were denied; U.S. Citizenship and Immigration Services (USCIS) “disregarded or downplayed” factors that would affect the applicant’s family upon separation; and USCIS “wrongfully concludes that the hardship to the [applicant’s] children cannot be considered,” when the Board of Immigration Appeals (BIA) “clearly states that such indirect hardship must be considered” (*referencing Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)). *See Form I-290B, Notice of Appeal or Motion*, dated May 9, 2008.

The record includes, but is not limited to: a brief and correspondence from counsel; letters of support; identity, employment, financial, and academic documents; and documents on conditions in Mexico.¹ The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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

(i) In general.- 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.

...

¹ The AAO notes the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

As certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these uncertified translations in support of the appeal.

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant was found to be inadmissible for having attempted to procure admission to the United States around July 16, 1995, by presenting a lawful permanent resident card that did not belong to her. The applicant was permitted to voluntarily return to Mexico. The record also reflects she subsequently entered the United States without inspection and has remained in the United States to date. On appeal, the applicant does not contest this finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [now Secretary of Homeland Security (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.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse is the only demonstrated qualifying relative in this case. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. I.N.S.*, 138 F.3d 1292, 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.

Counsel contends the applicant's spouse would suffer emotional and economic hardship in the applicant's absence as: he is "completely dependent" on the applicant to take care of their children while he provides for the family economically; it would be impossible for him to provide for their children's daily needs; their eldest child is "extremely close" to the applicant, and the applicant's spouse "would have to deal with the children and their emotional state due to the separation" from the applicant; he would be "without his wife, companion and best friend"; and he would risk losing their home.

Counsel also contends "one of the central purposes of the waiver is to provide for the unification of families" and "[f]ailure to weigh all family factors is reversible error" (citing *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979) and *Delmundo v. INS*, 43 F.3d 436, 442-43 (9th Cir. 1994)). The AAO adds that in *Salcido-Salcido v. INS*, *supra*, the Ninth Circuit held, "the most

important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” The AAO acknowledges the holdings of the Ninth Circuit, and as the present case arises within the jurisdiction of the Ninth Circuit, due consideration is given to family separation in the present matter.

The applicant discusses her relationship with her spouse, the love she feels for him and their children, and her desire to raise their children in the United States. Additionally, the applicant’s spouse states that a “home without a mother can be a huge disaster” and that he could not “replace the love” of the applicant for their children. Also, he indicates he is suffering from diabetes.

Although the applicant’s spouse may experience some hardship in the applicant’s absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO notes the applicant’s spouse is the sole breadwinner and has been employed by Shasta Industries, Inc., since July 8, 2002, earning \$600 weekly and monthly bonuses. *See Employment Letter*, dated September 10, 2007; *see also earnings statements*. The AAO notes the record also includes a utility statement, automotive certificates of title, and a warranty deed. However, the AAO finds the record does not contain sufficient evidence of the applicant’s spouse’s financial obligations and his inability to meet those obligations in the applicant’s absence. Also, the record does not include evidence of the applicant’s spouse’s current physical or mental health. Absent an explanation in plain language from the treating physician or mental health professional of the 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 or mental health condition or the treatment needed.

The AAO notes the concerns regarding the hardship the applicant’s spouse may experience in the applicant’s absence, but finds that even when evidence of this hardship is considered in the aggregate, the record fails to establish the applicant’s spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant’s spouse would suffer extreme hardship upon relocation to Mexico to be with the applicant. He is a national of Guatemala and a lawful permanent resident of the United States, who has assimilated to the American lifestyle since 1985; and his immediate family members reside in Arizona. Counsel adds that the applicant’s spouse has never lived in Mexico and does not have anyone there who could financially assist his family. Moreover, according to counsel, in Mexico the applicant’s spouse would not earn a comparable salary or benefit from government subsidized health benefits. Additionally, the applicant’s spouse is unfamiliar with the immigration process, and he fears for his safety and that of his family due to the crime and violence in Mexico.

The record reflects the applicant’s spouse has been a U.S. lawful permanent resident since December 1, 1990. Also, he maintains steady employment as well as close family and social ties. Although the record does not contain evidence of citizenship and nationality laws in Mexico, the U.S. Department of State has issued a travel warning for Morelos, Mexico, where the applicant and

her spouse would presumably reside, advising visitors to “exercise caution in the state of Morelos due to the unpredictable nature of [transnational criminal organization] violence. . . . Numerous incidents of narcotics-related violence have also occurred in the city of Cuernavaca” *Travel Warning, Mexico*, issued November 20, 2012. The AAO finds, considering the evidence of hardship in the aggregate, the applicant’s spouse would suffer extreme hardship upon relocation to Mexico.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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 this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her lawful permanent resident spouse 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.