

(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: **JUN 28 2013** Office: ALBUQUERQUE, NM

File: [REDACTED]

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).

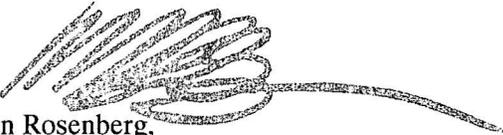
ON BEHALF OF APPLICANT:

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, Albuquerque, New Mexico, and 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 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 16, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse will experience emotional, financial and medical impacts amounting to extreme hardship. *Form I-290B*, received November 18, 2011.

The record contains, but is not limited, the following documents: a brief from counsel for the applicant; a statement from the applicant, the applicant's spouse and statements from friends and family members of the applicant's spouse; copies of pay stubs, a tax return and other financial documents of the applicant and her spouse; letters from the applicant's church; and reports on conditions in Mexico. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, 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 chapter is inadmissible.

The record indicates that the applicant entered the United States pursuant to a B-2 nonimmigrant visa with the intent to reside in the United States indefinitely, though she represented that she intended to enter for only the temporary period permitted in B status. Had she revealed that she intended to enter for an indefinite period, she would not have been eligible for admission in B status. Based on this act, the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for gaining admission to the United States by willful misrepresentation.

On appeal, counsel cites *Matter of Ibrahim*, 18 I&N Dec, 55 (BIA 1981), to support the proposition that the applicant should be permitted to adjust her status to lawful permanent resident irrespective of

her entry in B status through misrepresentation.<sup>1</sup> However, in *Matter of Ibrahim* the BIA addressed the impact of misrepresenting one's immigrant intent upon entry for the purpose of weighing such act as a discretionary factor in the course of adjudicating an application for adjustment of status. However, the present matter involves the applicant's Form I-601 application for a waiver due to her inadmissibility under section 212(a)(6)(C) of the Act. The BIA did not address inadmissibility under section 212(a)(6)(C) of the Act. The applicant's Form I-485 application is not before the AAO, and the AAO lacks jurisdiction of such application. The applicant has not established that she was improperly found inadmissible for misrepresenting her intent when entering the United States in B status, and she requires a waiver under section 212(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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-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

---

<sup>1</sup> Counsel indicates that a decision of the BIA, identified as *Matter of Batista*, 19 I&N Dec. 488 (BIA 1987), stands for the same proposition, yet the citation provided by counsel pertains to *Matter of Andrade*, which does not support counsel's assertions.

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.

On appeal, counsel for the applicant asserts that the applicant's spouse would experience physical, emotional and financial hardship upon relocation to Mexico. *Brief in Support of Appeal*, received

November 18, 2011. Counsel asserts that the applicant's spouse was born and raised in the United States, would have to separate from his family members in order to relocate, would not be able to find adequate health care for his alleged health problems and would suffer physical hardship due to the violent conditions in Mexico.

The AAO acknowledges that the applicant's spouse has family ties to the United States and that he was born and raised in the United States. However, the applicant's spouse speaks Spanish, and as noted by counsel, works as a bilingual operator for [REDACTED]. The record does not demonstrate that any emotional impact on the applicant's spouse from separating from his U.S. family rises above the common emotional impact of severing family and community ties experienced by most relatives of inadmissible aliens.

Counsel asserts that the applicant has "been eating a lot" and gaining weight due to the emotional stress of separation. There is no evidence corroborating counsel's assertions that the applicant's spouse is gaining weight due to emotional stress. Counsel's assertion that the applicant's spouse would not be able to find medical treatment in Mexico is based on speculation that the applicant's spouse requires medical treatment, and counsel's assertion that the applicant's spouse would not be able to navigate the Mexican healthcare system because he's a U.S. citizen fails to take into account that he speaks Spanish.

The record contains reports discussing the drug-related violence and corruption in Mexico. However, while the U.S. State Department Travel Warning discusses where and what type of violence is occurring in Mexico, there is no indication that the applicant or her spouse would reside in an area impacted by the violence. As such, the AAO cannot determine that the applicant's spouse would experience any uncommon physical or emotional hardship upon relocation to Mexico due to conditions there.

When the hardships asserted related to relocation are examined in the aggregate, the AAO does not find them to rise above the common impacts of relocation to the degree of extreme hardship.

With regard to separation, counsel asserts that the applicant's spouse will experience medical and emotional hardship due to separation from the applicant. *Brief in Support of Appeal*, received November 18, 2011. Counsel asserts that the applicant has "been eating a lot" and gaining weight due to the emotional stress of separation.

Counsel asserts that the applicant and her spouse won't be able to continue their dream of starting a family if she is denied admission. Yet the applicant has not shown that they would be unable to start a family in Mexico.

Counsel asserts on appeal that the applicant's spouse is close to obtaining a Bachelor's degree in the United States, and his efforts to do so would be compromised if the applicant were removed because he depends on her to cook for him, prepare his clothes and perform other household duties. However, there is no evidence to corroborate that the applicant's spouse is so dependent on the

applicant physically that he would be unable to function on a daily basis. Even in a light most favorable to the applicant, if there were evidence that the applicant's spouse would not be able to complete his degree, the applicant has not established that this circumstance would raise her spouse's challenges to an extreme level.

Counsel asserts the applicant's spouse would experience emotional hardship, both upon separation from the applicant, or upon separation from his U.S. family members if he were to relocate. While the record contains statements from family members attesting to the fact that the applicant and her spouse love each other and are deserving of a U.S. residence, this is not sufficient to distinguish the impact on the applicant's spouse from that which commonly impacts relatives of inadmissible individuals, both upon relocation and separation. As such, the AAO finds no basis to determine that the applicant's spouse will experience an uncommon emotional impact due to separation from the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is prohibited from residing in the United States. The AAO recognizes that the applicant's spouse would prefer to have her reside in the United States where they could fulfill their dreams of buying a home and having a family. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. 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.