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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: JUN 28 2013 Office: TUCSON, ARIZONA 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tucson, Arizona, 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 his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 6, 2012.

On appeal, the applicant asserts through counsel that the Field Office Director's decision was erroneous because the record contains sufficient documentation to establish his spouse will experience extreme hardship. *Form I-290B*, received January 8, 2013.

The record contains, but is not limited, the following documents: a statement from the applicant's spouse; statements from friends and family members of the applicant and his spouse; high school records pertaining to the applicant; a medical form certifying the applicant's spouse's pregnancy from [REDACTED] Arizona; a psychological evaluation of the applicant's spouse by [REDACTED] Ph.D.; police records pertaining to incidents of domestic abuse against the applicant's spouse's mother, dated 1994 and 1995; and photographs of the applicant and his spouse. 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 began residing in the United States in 2002 at the age of 13. He returned to Mexico in 2007 and on or about December 4, 2007, at the age of 18, he applied to renew a Border Crosser Card. He represented that he resided in Mexico, when in fact he had been residing in the United States for years. The applicant would not have been eligible for a B nonimmigrant visa had he revealed that he intended to use it to enter the United States to resume his indefinite residence. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C) of the Act for seeking a visa through willful misrepresentation of a material fact. The applicant does not contest his inadmissibility on appeal and he 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 his 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 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.

Counsel for the applicant asserts on appeal that the applicant’s spouse will experience physical, financial and emotional hardship impacts rising to the level of extreme hardship if the applicant is removed from the United States. *Brief in Support of Appeal*, received February 6, 2013. Counsel asserts that the applicant’s spouse witnessed abuse against her mother as a child and will experience extreme emotional hardship if the applicant is removed. Counsel further states that the applicant is the only source of income for his spouse and that the applicant’s spouse depends on the applicant physically because she does not have a car or driver’s license. He also states that the applicant’s spouse is currently pregnant, and that without the applicant present in the United States she will be unable to continue her education.

The record contains a document attesting to the fact that the applicant’s spouse was pregnant at the time of their appeal and is due in June 2013. There is no indication that the applicant’s spouse has a medical condition or problems related to her pregnancy. The AAO is unable to determine if the applicant’s spouse gave birth to a child or her current health status. However, due consideration is given to the applicant’s spouse’s additional needs due to late pregnancy or recent child birth.

The record contains a psychological evaluation of the applicant's spouse by Dr. [REDACTED] dated October 6, 2012. Dr. [REDACTED] notes that the battery of self-reported psychological tests for the applicant's spouse indicate that she is on the highest scale for results, indicating she suffers from severe depression and anxiety. Although the input of a mental health professional is valuable, the AAO notes that the submitted letter was based on a single interview between the applicant's spouse and the psychologist and was done based on a referral from the applicant's attorney, not a medical doctor. Nonetheless, as Dr. [REDACTED] discusses the pre-existing emotional impacts related to the applicant's spouse having witnessed domestic abuse against her mother, the AAO will give consideration to the emotional impact on the applicant's spouse due to the applicant's inadmissibility.

The applicant's spouse asserts in her September 11, 2012, statement that she does not have a car, driver's license or job and depends on her 21-year-old spouse physically and financially. The record does not contain any evidence that the applicant's spouse is incapable of obtaining a driver's license, a car or employment. Thus, as the applicant's spouse appears physically capable of obtaining a driver's license, car, or employment, the applicant has not shown that these circumstantial facts represent an uncommon impact due to separation. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994)(stating "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue their lives which they currently enjoy).

An examination of the record does not reveal any evidence of the applicant's spouse's financial obligations. Without evidence that the applicant's spouse has any financial obligations she would be unable to meet the AAO cannot determine that she will experience any uncommon financial impact due to separation from the applicant.

When the hardship considerations discussed above are considered in the aggregate, the AAO does not find them to rise above the common impacts of separation to a degree constituting extreme hardship.

With regard to hardship due to separation, counsel and the applicant's spouse make one assertion, that the applicant's spouse does not want to reside in Mexico due to the dangerous conditions and because she is an American citizen. The applicant has not submitted any evidence to establish that she would have to reside in an area affected by the current drug-related violence in Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As such, the record does not establish that the applicant's spouse would experience extreme hardship if she relocated to Mexico with 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 spouse faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse would prefer the applicant to reside in the United

States in order to assist her physically and financially. These assertions, however, represent 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 he 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 he 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.