



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **MAR 20 2013** Office: LOS ANGELES, CALIFORNIA

[Redacted]

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Los Angeles, California 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 seeking to procure a visa, admission into the United States or other benefit provided under the Act by willful misrepresentation.<sup>1</sup> The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) in order to reside in the United States with his U.S.citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 16, 2009.

On appeal, the applicant, through counsel, asserts that his spouse will suffer extreme hardship if he is not granted a waiver of inadmissibility.

The record contains, but is not limited to, counsel's brief, statements from the applicant, the applicant's spouse, letters from interested parties; financial records; as well as various immigration applications and decisions. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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.

In the present case, the record indicates that on August 25, 1996, the applicant attempted to enter the United States with a Form I-586, Border Crossing Identification Card that was issued to another individual. The applicant was served a Form I-122, Notice to Applicant for Admission Detained for a Hearing Before an Immigration Judge. The applicant was charged and found excludable pursuant to section 212(a)(7)(A)(i)(I) of the Act as an intending immigrant not in possession of valid admission documents. The applicant was deported on August 29, 1996 and testified during his interview for adjustment of status that he reentered the United States on the same date, using a Mexican passport which was not lawfully issued to him. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i). The applicant does not contest his inadmissibility.

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<sup>1</sup> The applicant was also found excludable by an Immigration Judge on August 29, 1996, and removed on the same date. As such, he requires an approved Form I-212 Application for Permission to ReApply for Admission into the United States (Form I-212). His Form I-212 was denied in a separate decision and has not been appealed.

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

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the 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 1292 (9th Cir. 1998) (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 indicates that the applicant’s spouse is undergoing severe mental stress due to her worries about the applicant’s inadmissibility. Counsel also asserts that the qualifying spouse would face various hardships if the applicant were removed from the United States such as financial difficulties and loss of educational opportunities. Counsel asserts that the applicant’s spouse relies on the financial support of the applicant, and her income alone would be insufficient to support herself and their children. Counsel also indicates that the applicant’s spouse would face difficulty in offering sufficient emotional support to their children if the applicant were not present in the United States.

The applicant’s spouse stated that she would find it hard to live apart from her husband since they have been married for a long time, and have not lived apart for any period since the birth of their children. The applicant’s spouse also indicated that the applicant provides significant financial support for the family, and it would be difficult for her to continue in her pursuit of higher education in the biological sciences, a research career in the United States, payments for the mortgage on their family home and vehicles, as well as other financial obligations, without his assistance. The applicant’s spouse further indicated that she is in constant fear and stress over the possibility of living separately from the applicant. The applicant’s spouse indicated that she is also worried that her children will face hardship if their father is required to leave the United States because the family would then face the choice of either remaining behind, or relocating

with the applicant. The applicant's spouse stated that these choices would be very difficult in either case because remaining in the United States will mean she would have to raise her two young children without the emotional and financial support of the applicant; but if she relocates with him they will also face severe economic and educational losses as well as personal safety fears. The applicant submits a letter from Social Worker, [REDACTED] dated December 5, 2009, which indicates that the applicant's spouse has expressed anxiety about the possibility of the applicant's departure from the United States, and would face a significant amount of new stressors, including, single family income, managing her own grief, as well as her children's, decreased opportunities in completing her educational goals, and difficulty finding full time employment if they lived separately. The applicant also submits letters from Professors, [REDACTED] dated January 29, 2007 and, [REDACTED] dated February 1, 2007, indicating that the applicant's spouse is on track in pursuing a doctoral degree in the biological research sciences, and has maintained academic success during her course of study throughout a Masters Degree program. The applicant's spouse also states that if she were to relocate with the applicant she would not be able to continue her current studies because she would not have the same opportunities and academic support in Mexico. The applicant's spouse further indicates that if she leaves the United States to live with the applicant she would have difficulty continuing to assist her parents financially. The applicant submits a letter from his spouse's employer, [REDACTED] the Executive Director at [REDACTED] dated December 1, 2009, who indicates that his spouse is employed as a Teaching Assistant and would be difficult to replace because of her strong math and science background, as well as her bilingual abilities.

In the present case, the applicant has not demonstrated that his spouse would face extreme hardship should she relocate with him to the Mexico. Although the spouse indicates that her pursuit of higher education in the biological research area, and a desire for a possible career as a researcher, would make relocation a significant challenge, the applicant has not provided sufficient evidence to demonstrate that his spouse would be unable to continue her education while in Mexico. In the supporting information submitted with counsel's supplemental brief it was again mentioned that the applicant's spouse was considering the pursuit of a scientific research career. However, no further documentation was submitted which would indicate that the applicant's spouse is currently working towards that pursuit or, would be unable to do so while living in Mexico. According to the letter from [REDACTED] the applicant's spouse is working as a bilingual teaching assistant in the subjects of math and science, but no specific information was provided which would indicate she could not find similar employment in Mexico. In addition, the applicant's spouse was born in Mexico and would therefore be familiar with the customs and culture and would be in a position to assist their children with any transitional difficulties they might face in relocating to that country. The applicant did not offer sufficient evidence to indicate that the educational or economic opportunities for his qualifying spouse would be significantly different than would be commonly expected under the circumstances.

The AAO also notes the applicant's spouse's personal safety concerns and has therefore reviewed the State Department's current *Mexico Travel Warning*, dated November 20, 2012.

Therein, U.S. citizens are warned that crime and violence are serious problems throughout the country and can occur anywhere. However, there are no current recommendations against travel to the city of Guadalajara where the applicant and his spouse were born and would presumably live. Therefore, after considering all of the evidence, the applicant has not demonstrated that his spouse would experience extreme hardship upon relocation.

The record also does not establish that the applicant's spouse would suffer extreme hardship due to separation from the applicant. The applicant's spouse indicates she would suffer extreme hardship if the applicant were required to leave the United States and she remained because she would be unable to support her family without the applicant's presence. The applicant's spouse states that she would lose the possibility for educational advancement because she would have to leave school to financially support her family without the applicant. The applicant's spouse further indicates she would be unable to pay her mortgage, and other household expenses with her university grants if the applicant were required to leave the United States. The applicant's spouse also indicates that it would be emotionally stressful for her to take care of their children as a single parent. The AAO has carefully considered the statements from the qualifying spouse as well the other documentary evidence indicating that the qualifying spouse is experiencing stress due to the applicant's immigration issues. However, the applicant has not provided sufficient evidence to demonstrate that separation would cause his spouse more than the normal hardship expected under the circumstances. On February 25, 2013, counsel submitted a supplemental brief, and included previously submitted documents. Specifically counsel re-attached, the letter from the social worker, dated December 5, 2009, and a 2009 property tax bill. The package also included a letter from the Director of [REDACTED]. The letter indicates that the applicant's spouse's position is Teaching Assistant for the upper grade children at the [REDACTED]. However, insufficient information was provided regarding the total household expenses and current incomes of the applicant and his spouse in order to determine what level of hardship might be caused by their separation. In addition, as the applicant provided no further documentation to indicate that his spouse remains in school while she is working as a teaching assistant, it is unknown whether the educational grants she was receiving are still a source of income which may be considered for the family's use. The emotional difficulties of separation in this case have also not been demonstrated to be more than would be expected under the circumstances. Although the letter from the social worker, indicates that the applicant's spouse might be at risk for such things as anxiety disorder, depression, high blood pressure and diabetes due to the stress of separation, there is insufficient evidence to indicate the applicant's spouse currently suffers from any of these illnesses.

Moreover, although the applicant's spouse also indicates that their children would undergo an emotional toll on separation from the applicant, in a waiver pursuant to section 212(i) of the Act, hardship to the applicant and his children may only be considered insofar as it affects the qualifying relative. In this case, it has not been sufficiently demonstrated that the effects on the applicant's spouse would be more than the normal impact caused by separation due to the inadmissibility of a close relative. The applicant has therefore, not demonstrated that separation based on his inadmissibility to the United States would cause extreme hardship to his qualifying spouse.

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The AAO consequently finds that, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen 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 an 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.