



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAR 26 2013** OFFICE: LOS ANGELES, CALIFORNIA

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, Los Angeles, California, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, however, the underlying application remains denied.

The applicant is a native and citizen of Mexico who has resided in the United States since September 1996, when he entered the United States without inspection. The applicant had attempted to enter the United States earlier that month by presenting a Form I-586 border crossing card which did not belong to him to immigration officials. The applicant was placed in exclusion proceedings and was ordered excluded on September 24, 1996. He 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish his spouse would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated March 11, 2009. The AAO dismissed the appeal, finding the applicant did not meet his burden of proof in demonstrating that his spouse would experience extreme hardship in the event of separation from the applicant or relocation to Mexico. *See AAO Decision*, December 30, 2011.

On motion, counsel for the applicant submits a brief in support, real property records, immigration related documents, educational records, and articles on country conditions in Mexico. In the brief, counsel contends that the AAO gave inappropriate weight to several factors in the case, such as the spouse's country of birth and the children's language skills. Counsel moreover contends the applicant's spouse will suffer hardship in Mexico due to the country conditions, her children's inability to adjust to life and obtain a good education in Mexico, and the fact that the applicant's mother is immigrating to the United States and will be unable to help her adjust to life in Mexico.

The record includes, but is not limited to, the documents listed above, declarations from the applicant's spouse, evidence of birth, marriage, naturalization, and permanent residence, more medical and school records, letters from employers, copies of U.S. federal income tax returns, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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.

Section 212(i) of the Act provides:

- (1) 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.

In the present case, the record reflects that on September 20, 1996 the applicant presented a Form I-586 border crossing card bearing the name of [REDACTED] to immigration officials in an attempt to gain admission into the United States. *See record of deportable alien*, September 20, 1996. The applicant admitted that the card did not belong to him, and he was ordered excluded from the United States. *See Order of Immigration Judge*, September 24, 1996. At an immigration interview the applicant admitted he entered the United States without inspection later that month. Inadmissibility is not contested on motion. The AAO therefore affirms that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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. 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 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 v. I.N.S.*, 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 asserts the AAO gave inappropriate weight to the fact that the applicant's spouse was born in Mexico and knows the Spanish language. Counsel states that the spouse spent her formative years in the United States, graduated from high school in the United States, and has lived her entire adult life in this country. Counsel reiterates that the applicant's parents and immediate family live in the United States, and consequently, she has many ties to this country. Counsel asserts that the spouse does not believe she would survive in Mexico due to social, cultural, economic, and employment issues, because she has spent essentially her entire life in the United States. Counsel moreover claims that the AAO mistakenly stated that the children were taking English a second language (ESL) classes. Letters from the children's teachers and updated

school records are submitted on motion. Counsel additionally states that the children's hardship upon relocation to Mexico should be considered as it will affect the applicant's spouse emotionally. Articles on education in Mexico, childhood asthma on the northern Mexico border, and on migrants returning to Mexico from the United States are submitted on motion. Counsel further explains that the applicant's mother will be immigrating to the United States, and will therefore be unavailable to help with adjustment to life in Mexico. Counsel concludes that adverse country conditions in Mexico, such as drug violence, violence against students, prejudice, inadequate medical treatment, and the educational system in Mexico add to the extreme hardship the applicant's spouse will face in Mexico. Articles on country conditions are submitted in support.

Counsel additionally contends the AAO inappropriately relied on *Matter of Ngai*, 19 I&N Dec. 245 (Comm'r 1984) because the couple in *Ngai* had been separated for over 28 years, whereas the applicant and her spouse have been together for over ten years, and have two U.S. Citizen children together. However, as set forth above, the AAO takes into account the hardship due to separation based on the facts in each individual case. Hardship due to separation from family members who have already been voluntarily separated is distinct from hardship experienced by families who continue to reside together. The AAO will therefore evaluate the cumulative hardship the applicant's spouse experiences as a result of aggregated individual hardships.

The record indicates that the applicant's spouse will experience extreme hardship upon relocation to Morelos, Mexico. Although the applicant's spouse is a native of Mexico, the record reflects that she has lived in the United States since she was a child, and will consequently have some difficulty adapting to life and culture in Mexico. Furthermore, even though documentation submitted indicates that the children know Spanish as well as English, the record reflects that the children's difficulty adapting to the educational system, culture, and other aspects of living in Mexico will exacerbate the spouse's emotional hardship. Separation from her family members in the United States will also add to the spouse's emotional hardship. Moreover, there is objective evidence of record demonstrating that the applicant's spouse and children may be subject to safety-related difficulties in Morelos, Mexico. The U.S. Department of State indicates in its latest travel warning:

You should exercise caution in the state of Morelos due to the unpredictable nature of TCO violence. On August 24, two USG employees were injured after being fired upon by Federal Police officers on an isolated road north of Tres Marias, Morelos. Numerous incidents of narcotics-related violence have also occurred in the city of Cuernavaca, a popular destination for U.S. students.

*U.S. Department of State, Travel Warning: Mexico*, November 20, 2012. As such, evidence of record reflects that the applicant's spouse will experience family and safety-related, cultural, and other emotional difficulties upon relocation to Mexico.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of

inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Morelos, Mexico.

The applicant, however, does not provide supplemental evidence on the hardship his spouse will experience upon separation. The record still reflects that the applicant's spouse would experience emotional difficulties without the applicant present as a husband and a father to her two children. While the AAO acknowledges that she would face such difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the emotional, family-related, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without his spouse.

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 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.

In this case, 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 a 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, although the motion is granted, the underlying application remains denied.

**ORDER:** The motion is granted, but the underlying application remains denied.