



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **MAR 28 2013**

Office: CIUDAD JUAREZ

FILE: [REDACTED]

IN RE: Applicant: [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:

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 request 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, Ciudad Juarez, Mexico, 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 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 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 her U.S. citizen fiancé.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her fiancé and denied the application accordingly. *See Decision of Field Office Director*, dated June 12, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director failed to consider several hardship factors and did not consider the evidence in the aggregate. Counsel contends that if the waiver application is denied, the applicant's fiancé will suffer financial and medical hardship, will lose his business and be forced to abandon his education, and will be separated from his U.S. citizen daughters. *Counsel's Brief*.

The record includes, but is not limited to: a statement from the applicant's fiancé; financial records; money transfer receipts; vehicle records; a custody order regarding the applicant's fiancé's children; medical records; education records; and country conditions information. 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.

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.

The waiver is also available to the beneficiary of an approved K visa petition who demonstrates that refusal of admission to the United States would result in extreme hardship to her U.S. citizen fiancé, the K visa petitioner.

In the present case, the record reflects that on January 31, 2009, the applicant presented a border crossing card belonging to another individual in an effort to gain entry into the United States. The applicant is therefore 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. She does not contest this finding of inadmissibility on appeal. She is eligible to apply for a waiver under section 212(i) of the Act as the fiancée of a U.S. citizen.

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 of Immigration Appeals (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 U.S. 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. INS*, 138 F.3d 1292, 1293 (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.

The applicant’s fiancé states that separation from the applicant has been very difficult for him. He claims that the applicant lives with her mother in Mexico and does not work, so he sends money to support her and her family. He also provides her family with two cars, which are registered in the applicant’s name but for which he provides insurance. He asserts that he cannot afford to support the applicant, but he continues to send her money because he wants to take care of her. He explains that he owns a window tinting business but that his profit is small and that he has incurred \$8,600 in credit card debt in supporting himself and the applicant.

Additionally, the applicant’s fiancé contends that he has suffered emotional hardship in the applicant’s absence. He states that his mother, with whom he was very close, died recently and that his grief over her death has been compounded by his separation from the applicant. He also states that he has hypertension, for which he takes medication. He claims that the stress and anxiety he has experienced in being separated from the applicant has had a negative impact on his health.

The applicant’s fiancé also asserts that he would suffer hardship if he were to relocate to Mexico with the applicant. He states that he would be forced to abandon his business and to stop taking English and G.E.D. classes. He would also lose his health insurance and the medical care he has

been receiving for hypertension. Additionally, he asserts that he would be separated from his two U.S. citizen daughters, who live with his ex-wife and with whom he is trying to maintain a relationship. He also fears that living in Mexico would be dangerous due to the security situation there.

The AAO finds that the applicant has failed to demonstrate that her fiancé will suffer extreme hardship if he continues to be separated from her. The record establishes that the applicant's fiancé has hypertension, but a note from his doctor indicates that his condition is controlled with medication. Although the applicant's fiancé also claims that he has suffered emotional hardship due to his separation from the applicant, there is no evidence in the record to support that claim or to demonstrate the severity of such hardship. Additionally, while the applicant's fiancé claims that he is experiencing financial hardship in the applicant's absence, the evidence in the record is insufficient to support that claim. The record does contain money transfer receipts indicating that the applicant's fiancé has sent between \$1000 and \$2000 to the applicant on at least three occasions, but the evidence does not establish that he cannot afford to do so or that the payments are ongoing. The applicant's fiancé's tax returns indicate that his total income in 2011 was \$19,165, but there is no documentation of his monthly expenses. While he also claims that he has \$8,600 in credit card debt, there is no evidence to support that claim. 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)).

The AAO also finds that the applicant has failed to show that her fiancé will suffer extreme hardship if he relocates to Mexico to join the applicant. The applicant's fiancé claims that moving to Mexico would force him to abandon his business and his education, but such concerns do not reach the level of extreme hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999); *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). Additionally, while he claims that relocation would separate him from his U.S. citizen daughters, the record indicates that he was incarcerated after being convicted of child abuse and that he has no visitation rights with his minor daughter. Furthermore, the applicant's fiancé is originally from Mexico so he is familiar with the language and culture of that country. Finally, while he alleges that it would be unsafe for him to live in Mexico, the evidence does not establish that the risk would be so high as to create extreme hardship for him. The record indicates that the applicant is living in Morelos, Mexico, so it is reasonable to conclude that her fiancé would join her there. The U.S. Department of State does not warn against travel to the state of Morelos, but instead suggests that travelers "exercise caution" there. See *U.S. Department of State, Travel Warning: Mexico*, dated November 20, 2012. While the applicant has submitted news reports about violence in Mexico, none of the reports mention a risk in Morelos in particular. Even when considered in the aggregate, the factors presented do not establish extreme hardship for the applicant's fiancé. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative 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.