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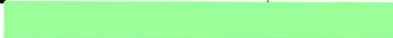
**MAR 28 2013**

Office: CIUDAD JUAREZ

FILE:



IN RE:



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:

SELF-REPRESENTED

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,

for

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 is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated July 7, 2012.

On appeal, the qualifying spouse asserts that he is suffering financial, medical, and emotional hardship due to the absence of the applicant and his young daughter.

The record includes, but is not limited to: statements from the qualifying spouse; a letter from the qualifying spouse's doctor; and a copy of an internet "Payoff Calculator" result sheet. 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.

In the present case, the record reflects that on July 4, 2006, the applicant applied for admission by presenting a Form I-551, Permanent Resident Card, belonging to another person. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting 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 spouse 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. Hardship to the applicant or to her child can only be considered insofar as it causes extreme hardship to her qualifying spouse. 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-I-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, 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 qualifying spouse states that he has been unable to maintain a steady job because he travels frequently to Mexico to visit the applicant and his daughter and to receive medical treatment. While in the United States, he takes odd jobs doing manual labor, earning \$400 to \$500 per week. He is living with his mother until he can earn a higher income. The qualifying spouse also asserts that he sends \$300 to the applicant and his daughter every 15 days in order to support them. He states that he also pays \$200 per month for his medication and that he has a debt to the IRS. The qualifying spouse contends that his expenses and his low income prevent him from saving any money.

Additionally, the qualifying spouse asserts that he is suffering medical hardship in the applicant's absence. He states that he has ulcerative colitis, an inflammatory bowel disease which worsens with stress. He contends that his separation from the applicant and his daughter has increased his stress and his symptoms. He states that he is “physically weak and powerless when [his] disease is at a high point,” which interferes with his ability to work.

Finally, the qualifying spouse claims that he is suffering emotionally due to his separation from the applicant. He indicates that he cannot live without the applicant and that her presence used to keep his stress levels to a minimum, decreasing the pain he experienced from ulcerative colitis. He states that he would join the applicant and his daughter in Mexico if he could, but that doing so would cause him to lose his permanent residence in the United States. He also fears that he would be unable to obtain necessary medical care in Mexico and that he would struggle to find a job there.

The AAO finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Mexico. Although the qualifying spouse is originally from Mexico, he has been a lawful permanent resident of the United States since 2000 and he would lose that status if he were to relocate permanently to Mexico. The qualifying spouse also has close family ties in the United States, including his mother, with whom he lives. Additionally, the record indicates that the applicant is living in the state of San Luis Potosi, where significant drug-related violence is occurring. The U.S. Department of State recommends that U.S. citizens "defer non-essential travel" to San Luis Potosi. See *U.S. Department of State, Travel Warning: Mexico*, dated November 20, 2012.

However, the AAO cannot find that the applicant has demonstrated that her qualifying spouse will suffer extreme hardship if he continues to be separated from the applicant. Although the record reflects that the qualifying spouse has chronic ulcerative colitis, it appears that his condition is being controlled with regular medication. See *Letter from Dr. [REDACTED]*, dated July 30, 2012. While the qualifying spouse claims that his ulcerative colitis symptoms have worsened due to stress since he has been separated from the applicant and that it has interfered with his ability to work, there is no evidence in the record 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)). Additionally, while the qualifying spouse claims that he has been unable to hold a steady job because he must travel frequently to Mexico for medical care, it is unclear why he has not obtained medical care in the United States.

Furthermore, the evidence in the record is insufficient to show that the qualifying spouse is suffering financial hardship. There is no support for the qualifying spouse's claim that he sends money to the applicant on a regular basis, that he pays \$200 per month for medications, or that he lives with his mother because he cannot support himself. While the qualifying spouse did submit a copy of an internet document labeled "Payoff Calculator" which appears to relate to a debt to the IRS, the source and reliability of the document are not clear. Additionally, the document appears to reflect debts owed in January and February 2012, so the qualifying spouse's current financial situation is not clear from the record.

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 in 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). The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident 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.