



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

(b)(6)

Date: **MAY 15 2013**

Office: SAN JOSE, CA

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 (the 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. 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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, San Jose, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The acting field office director found that the applicant established extreme hardship to her husband if he relocated to Mexico, but did not establish extreme hardship to her husband if he decided to remain in the United States. The field office director denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 24, 2012.¹

On appeal, counsel contends that the applicant is eligible to adjust her status because she acted in reliance on the Court of Appeals for the Ninth Circuit's decision in *Perez-Gonzalez*, and in any event, ten years have elapsed since her removal from the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED], indicating they were married on April 12, 2001; a copy of the birth certificate of the couple's U.S. citizen daughter; a declaration from the applicant; a declaration from Mr. [REDACTED] numerous letters of support, including from family members and the couple's church; a letter from the applicant's father's physician and a copy of the applicant's father's death certificate; letters from the applicant's mother's physicians; copies of tax returns, pay stubs, and other financial documents; a letter from Mr. [REDACTED] s employer; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

¹ The AAO notes that the field office director denied the applicant's Form I-485 and Form I-212 on July 17, 2009. In the decision denying the Form I-485, the field office director references the fact that the I-601 was also denied; however, the record does not contain a copy of a separate decision denying the applicant's waiver application. Counsel diligently and timely filed an appeal from the Form I-601 denial, even though there was no separate decision. In March of 2012, the AAO returned the record to the field office because there was no copy of the Form I-601 denial. The field office returned the record to the AAO with a newly issued decision denying the waiver application on April 24, 2012. By facsimile dated February 7, 2013, the AAO contacted counsel, affording counsel thirty (30) days to provide an additional brief and/or evidence in support of the applicant's appeal. To date, the AAO has not received any response or additional evidence from counsel for this matter. Therefore, the AAO will adjudicate the appeal on the merits based on the record before it.

- (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 that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 this case, the record shows, and the applicant does not contest, that she attempted to enter the United States by using a fraudulent U.S. birth certificate on October 7, 1995. The applicant was detained, ordered removed by an immigration judge, and was removed from the United States on October 13, 1995. The record further shows, and counsel concedes, that the applicant entered the United States without inspection the next day, on October 14, 1995, and has since remained in the United States. Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.²

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.

² To the extent counsel contends the applicant is eligible to adjust her status because she acted in reliance on the Court of Appeals for the Ninth Circuit’s decision in *Perez-Gonzalez*, as more thoroughly explained in the AAO’s concurrent decision denying her Form I-212, the applicant is not inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act as her reentry into the United States pre-dates the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”) and, therefore, *Perez-Gonzalez* does not apply.

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.

In this case, the applicant's husband, Mr. [REDACTED] states that he was born in California, has lived in California his entire life, and that his entire family lives in California. He states that he and his wife have a daughter and that since 2002, he has been employed by the [REDACTED], where he intends to work until retirement. According to Mr. [REDACTED], he would suffer extreme hardship if he moved to Mexico to be with his wife because his Spanish is very limited and he has only been to Mexico twice

for short vacations. He fears being able to find comparable employment in Mexico, particularly given his limited Spanish skills.³

After a careful review of the record, the AAO finds that if Mr. [REDACTED] relocated to Mexico to avoid the hardship of separation from his wife, he would experience extreme hardship. The record shows that Mr. [REDACTED] has lived in the United States his entire life and that his entire family lives in the United States. A letter from his employer confirms that Mr. [REDACTED] has worked for the [REDACTED] since 2002. The AAO recognizes that relocating to Mexico would entail leaving a job he has held for over ten years and all of the benefits that come with it. In addition, the AAO acknowledges Mr. [REDACTED]'s contention that he has limited Spanish skills and that he has never lived in Mexico. Moreover, the AAO takes administrative notice of the U.S. Department of State's Travel Warning, urging U.S. citizens to defer non-essential travel to the state of [REDACTED], where the applicant was born. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering all of these factors cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he relocated to Mexico to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, Mr. [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). The record shows that Mr. [REDACTED] has ample family support to remain in the United States, even as a single parent to his eight-year old daughter. The record also shows he has a secure job to continue supporting his family. In addition, the record shows that the applicant has worked as a Nurse's Aide since 1999 and there is no suggestion in the record that she could not find employment in Mexico. In sum, although the AAO recognizes the hardship of being separated from a spouse, there is insufficient evidence in the record to show that Mr. [REDACTED]'s hardship would be extreme, atypical, or unique. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship Mr. [REDACTED] will experience amounts to extreme hardship.

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). As the applicant has not demonstrated

³ Although the applicant claims that her mother adjusted her status through her son, there is no evidence in the record to show that the applicant's mother is a qualifying relative.

extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to Mr. [REDACTED] the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *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.