

(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

[Redacted]

Date: **NOV 07 2013**

Office: JACKSONVILLE

FILE: [Redacted]

IN RE: [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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful 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 reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 28, 2013.

On appeal, counsel for the applicant submits court documents pertaining to the applicant and information about country conditions in Mexico. The entire record was reviewed and considered in rendering this decision.

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.

....

(ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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.

Regarding the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record reflects that in May 1994, the applicant filed the Form I-589, Request for Asylum in the United States, claiming to be a native and citizen of Guatemala. In addition, in February 1996, the applicant attempted to procure entry to the United States by presenting a Form I-688B (Employment Authorization Document) card that he claimed to have obtained based on his Guatemalan citizenship. After further questioning in secondary inspection, the applicant admitted that he was a Mexican national.

On appeal, counsel contends that the applicant never told the U.S. immigration authorities that he was Guatemalan. Counsel contends that the applicant is illiterate in both Spanish and English. Counsel further asserts that the applicant's employer told the applicant to sign immigration documents and since the applicant was unable to read or write in English and Spanish, he signed documentation stating that he was from Guatemala. See *Form I-290B*, dated April 26, 2013.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). To begin, the record clearly establishes that in February 1996, the applicant applied for admission as a passenger in a taxi and presented a document declaring himself to be Guatemalan. He was referred to secondary inspection for further questioning. During secondary inspection, the applicant stated that he obtained the EAD card under an INS program for persons from Guatemala and that he was a Guatemalan citizen. Upon further questioning during secondary inspection, the applicant admitted that he was not from Guatemala, but was in fact a Mexican citizen. See *Record of Deportable Alien*, dated February 24, 1996. As such, despite counsel's contention to the contrary, the applicant did state that he was from Guatemala when attempting to procure entry in February 1996.

Counsel asserts that the applicant is illiterate and only signed documents upon his employer's urging, and he did not review them to ensure their accuracy. The record establishes that, on May 24, 1994, the applicant signed the Form I-589, which stated that he was born in Malacatan, San Marcos, Guatemala and his nationality at birth and at present was Guatemalan. In his sworn statement dated February 24, 1996, the applicant stated that he was informed by the individual preparing these forms that she was arranging for him to receive an employment authorization by claiming he was from Guatemala, and, as noted above, the applicant stated that he was from Guatemala when he sought entry to the United States with the EAD card. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought an immigration benefit and entry to the United States through fraud or willful misrepresentation.

The AAO notes that in June 1998 the applicant pled nolo contendere to Petit Theft in Florida. The applicant was required to pay court costs. The issue of whether or not the applicant was convicted of a crime involving moral turpitude rendering the applicant inadmissible under

section 212(a)(2)(A)(i)(I) of the Act has not been addressed. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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 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 applicant’s U.S. citizen spouse contends that she will suffer emotional and financial hardship if she remains in the United States while the applicant relocates abroad due to his inadmissibility. In a statement, the applicant’s spouse explains that she has been married to her husband for almost fourteen years and he is her only companion and her only supporter. The applicant’s spouse further maintains that her husband is the main financial provider for the family. Finally, the applicant’s spouse states that the applicant is the only father her children have ever known. *Affidavit from Camille Martinez*, dated February 22, 2013.

The AAO acknowledges the applicant’s spouse’s contention that she will experience emotional hardship were she to remain in the United States while her husband relocates abroad, but the record does not establish the severity of this hardship or the effects on her daily life. 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)). As for the financial hardship referenced, no documentation has been provided on appeal establishing the applicant’s spouse’s current overall financial situation to establish that without the applicant’s physical presence in the United States, the applicant’s spouse will experience financial hardship. The record establishes that the applicant’s spouse is gainfully employed, since August 2009, with [REDACTED]. Additionally, it has not been established that the applicant is unable to obtain gainful employment in Mexico that would allow him to assist his wife financially in the United States should the need arise. Finally, the record does not establish the ages of the applicant’s spouse’s children, the specific role the applicant plays in their daily lives, what specific hardships they would experience were the applicant to relocate abroad, and how said hardships would impact the applicant’s spouse, the only

qualifying relative in this case. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regard to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the applicant's spouse maintains that were she to relocate to Mexico to be with her husband, she would live in fear of the widespread violence and of being kidnapped, thereby causing her great emotional unrest. *Supra* at 1. In support, the applicant on appeal has submitted general documentation pertaining to country conditions in Mexico. No documentation has been provided establishing that the applicant's spouse specifically would be in danger were she to relocate to Mexico to reside with the applicant. As such, the applicant has not established that his spouse would experience extreme hardship were she to relocate to Mexico as a result of the applicant's inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.