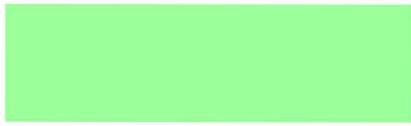




U.S. Citizenship
and Immigration
Services

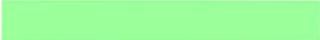
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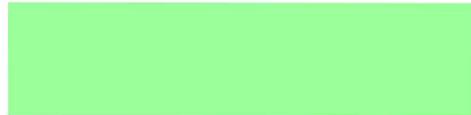
OFFICE: WASHINGTON FIELD OFFICE

FILE: 

IN RE: 

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 (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 Field Office Director, Washington, D.C., denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated August 21, 2012.

On appeal, counsel for the applicant asserts that the applicant's spouse is needed in the United States to care for her mother and granddaughter, who both have disabilities and require assistance. Counsel contends that the applicant's spouse's safety would be in jeopardy upon relocation to El Salvador. Counsel further contends that the applicant's spouse is suffering from depression and that she and her family rely upon the applicant's income in the United States.

In support of the waiver application and appeal, the applicant submitted identity documents, background country conditions for El Salvador, financial documentation, medical and psychological documentation, letters of support, and family photographs. 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.

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 immigrant 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...

The applicant is a native and citizen of El Salvador who last entered the United States pursuant to a B-2 visa on July 20, 2001. However, on an application for temporary protected status (TPS), the applicant asserted that he had entered the United States without admission or parole on December 28, 2000. This misrepresentation was material, as having entered the United States on or before February 13, 2001 was an eligibility requirement for TPS for Salvadoran nationals.

The applicant asserts that he did not knowingly misrepresent his date and manner of entry to the United States, as he signed his TPS application without reading its contents. The applicant contends that he was not aware of the misrepresentation, made by a notary, upon signing the application. The TPS denial decision, dated April 30, 2003, states that when the applicant was confronted with his misrepresentation, he admitted that he had been untruthful. It is noted upon receiving a notice of intent to deny his TPS application, the applicant submitted affidavits from two individuals, falsely stating that he was physically present in the United States prior to his entry date of July 20, 2001. The applicant has failed to satisfy his burden of proof and demonstrate that he is not subject to inadmissibility under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure an immigration benefit through fraud or misrepresentation.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-Morales*, 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*, 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.

The record reflects that the applicant is a 42-year-old native and citizen of El Salvador. The applicant's spouse is a 49-year-old native of El Salvador and lawful permanent resident of the United States. The applicant is currently residing with his spouse and their family members in Virginia.

Counsel for the applicant asserts that the applicant's income in the United States is necessary because the financial condition of his family is precarious, with major medical debt. The record reflects that the applicant and his spouse reside with nine other individuals: the applicant's spouse's mother; the applicant's two children, 19 and 15 years of age; the applicant's

stepdaughter, 29 years of age; and the applicant's stepdaughter's husband and three children. The record contains a 2011 tax return for the applicant indicating wages in the amount of \$18,488. The most recent financial documentation for the applicant's stepdaughter and her husband includes a 2009 tax return indicating a total income of \$45,984. The record also contains a mental health evaluation stating that the applicant's stepdaughter and her spouse earn \$60,000 per year and the applicant earns \$12 per hour and works 40 hours a week. The record does not contain any updated supporting financial documentation concerning the applicant's stepdaughter's income or the applicant's income and stated expenses. It is also noted that the mental health evaluations states that the family members are extremely connected and deeply rely upon each other. There is no indication that the applicant's spouse's relatives would or could not offer financial support, as necessary. The record is insufficient to find that the applicant's spouse's would be unable to meet her financial obligations in the absence of the applicant.

Counsel for the applicant asserts that the applicant and his spouse have a loving relationship and that the applicant's spouse is suffering from feelings of depression and hopelessness due to his immigration issues. The record contains a mental health evaluation indicating that the applicant's spouse is experiencing minimal levels of depression, minimal levels of hopelessness, and low anxiety. The mental health evaluation states that the applicant's spouse may be masking her feelings, but that she displays a strong personality, able to overcome adversity. It is noted that the mental health evaluation also considers the applicant and the applicant's stepdaughter. The applicant's spouse is the only qualifying relative in the context of this application so that any hardship the applicant and his stepdaughter would experience will be considered only insofar as it affects the applicant's spouse.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to El Salvador because she would leave behind her ties in the United States and face safety concerns in El Salvador. The record reflects that the applicant's spouse is a native of El Salvador. As noted, the applicant's spouse currently resides in a home with the applicant and eight of their relatives. Counsel contends that the applicant's spouse is a caretaker for her mother and granddaughter, both of whom suffer from ailments requiring assistance. The record contains a letter from the spouse's mother's physician stating that she is being treated for conditions including high blood pressure, anemia, and schizophrenia. The physician further states that he does not believe that the applicant's spouse's mother would be capable of caring for herself. The mental health evaluation of the applicant's spouse states that the applicant's spouse has a close knit relationship with her live-in relatives and provides 24-hour care for her mother. The record also contains

medical documentation indicating that the applicant's spouse's grandchild suffers from cerebral palsy and requires frequent and constant care. A letter from the grandchild's physical therapist states that the applicant's spouse takes her grandchild to physical therapy, participates in the sessions, and supervises home exercises on a daily basis. The mental health evaluation of the applicant's spouse also states that the applicant's spouse provides care for this grandchild while her stepdaughter is working and attending school.

Counsel for the applicant asserts that the applicant's spouse would suffer from the country conditions in El Salvador that present a risk to her safety. Neither the applicant nor the applicant's spouse have addressed where in El Salvador they would relocate, but the record indicates that the applicant was born in San Vicente and the applicant's spouse was born in San Miguel. The U.S. Department of State issued a travel warning for El Salvador, dated August 9, 2013, specifically stating that San Miguel and San Vicente, amongst other departments in El Salvador, have higher levels of criminal activity and homicide rates higher than the national average.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to El Salvador. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his 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

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NON-PRECEDENT DECISION

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balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion.

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.