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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: **OCT 21 2013**

Office: ANAHEIM, CA

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility and Application for Permission to Reapply for Admission into the United States after Deportation or Removal pursuant to sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A)

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 International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, denied the waiver application (Form I-601) and the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The matter 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 pursuant to section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for more than 180 days but less than one year, section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(A) of the Act as an alien who has been previously removed. The applicant is engaged to be married to a U.S. citizen and seeks a waiver of inadmissibility and permission to reenter the United States pursuant to sections 212(a)(9)(B)(v), 212(i), and 212(a)(9)(A)(iii) of the Act in order to reside with her fiancé in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly.

On appeal, counsel contends, among other things, that the field office director erred in contending that the applicant claimed her future father-in-law would suffer extreme hardship when, in fact, the applicant was claiming her fiancé would suffer extreme hardship as a result of his obligation to assist his father. Counsel submits additional evidence of hardship on appeal.

The record contains, *inter alia*: a letter from the applicant; letters from the applicant's fiancé, Mr. [REDACTED] letters from Mr. [REDACTED]'s parents and sister; medical documents and copies of prescription medications; letters from the Social Security Administration; a Court Order; copies of bills, bank account statements, and other financial documents; letters of support; copies of photographs of the applicant and her fiancé; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; and an approved Petition for Alien Fiancé (Form I-129F). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) *In general.* - Any alien (other than an alien lawfully admitted for permanent residence) who -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) *Waiver.* – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

- (i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (ii) *Other aliens.* Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

In this case, the record shows, and counsel does not contest, that the applicant entered the United States in July 2010 using her border crossing card and resided with her fiancé until December 2010 in violation of the terms and conditions of her border crossing card. The record further shows, and counsel does not contest, that the applicant attempted to enter the United States on January 6, 2011, using her border crossing card, telling immigration officials that the purpose of her trip was to visit her grandfather, but then admitting during secondary inspection that the true purpose of her trip was to continue residing with her fiancé. The applicant was placed in expedited removal proceedings and removed to Mexico the same day. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for more than 180 days but less than one year, section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(A) of the Act as an alien who has been previously removed.

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.

In this case, the applicant's fiancé, Mr. [REDACTED] states that his father is mentally ill, is in a mental hospital, and has diabetes and epilepsy. According to Mr. [REDACTED] he recently had to take his mother to the hospital because she is stressed over what her husband is going through. Mr. [REDACTED]

states he cannot relocate to Mexico because his parents need him now more than ever. He contends he is depressed and needs his fiancée with him in order to get through these tough times. In addition, Mr. [REDACTED] states he has lived in Phoenix, Arizona, for over twenty-two years and has worked in the construction field for over ten years. He states that Mexico is a really dangerous place to live and he would go crazy if anything happens to his fiancée in Mexico.

After a careful review of the record, the AAO finds that if Mr. [REDACTED] returned to Mexico, where he was born, to avoid the hardship of separation from his fiancée, he would experience extreme hardship. The record contains documentation corroborating Mr. [REDACTED]'s claims regarding his parents' health problems. The record shows that Mr. [REDACTED]'s father suffers from paranoid schizophrenia and according to a Court Order in the record, has been committed for inpatient mental health treatment and medication. Letters from the Social Security Administration show that Mr. [REDACTED]'s father has qualified for disability benefits since July 1999. The record also shows that Mr. [REDACTED]'s mother was seen in the emergency room and diagnosed with Brachial Neuritis, a form of peripheral neuropathy characterized by pain or loss of function in the nerves. According to Mr. [REDACTED]'s parents and sister, he is the one who renders them the most help both physically and financially. The AAO recognizes Mr. [REDACTED]'s reluctance to relocate to Mexico, which would entail leaving his parents, both of whom have significant medical problems. In addition, the AAO acknowledges Mr. [REDACTED]'s contention that he has lived in the United States most of his life and that relocating to Mexico would entail leaving his job, the union, and all of the benefits that come with it. Moreover, the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for Mexico, urging U.S. citizens to defer non-essential travel to Chihuahua, where the applicant was born and is currently living. *U.S. Department of State, Travel Warning, Mexico*, dated July 12, 2013. Considering all of these factors cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he returned to Mexico to be with his fiancée 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 has suffered, or will suffer, extreme hardship if he were to remain in the United States without his fiancé. Although the AAO is sympathetic to the couple's circumstances, and acknowledges that Mr. [REDACTED] has sent money to support his fiancé in Mexico, 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). Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship Mr. [REDACTED] has experienced or 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 extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's fiancé in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancé 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 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.