



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 18 2013

OFFICE: ANAHEIM, CALIFORNIA

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

AKA: [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:

INSTRUCTIONS:

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 International Adjudications Support Branch on behalf of the District Director, Mexico City, 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The record indicates that the applicant is the mother of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility in order to reside in the United States.

The District Director concluded that the applicant also is inadmissible under section 212(a)(9)(C) of the Act and is ineligible for consent to reapply for admission. Because he found that no purpose would be served in adjudicating her waiver under section 212(i) of the Act, he denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). *See Decision of the District Director*, dated October 22, 2009.

On appeal counsel asserts that refusal of admission to the applicant would result in extreme hardship to her qualifying relative spouse. *See Counsel's Appeal Brief*, dated November 18, 2009. The applicant's Form I-290B, Notice of Appeal or Motion (Form I-290B), was filed on October 26, 2009; the AAO, however, did not receive it until June 13, 2013.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; statements from the applicant's spouse; letters from the applicant and her adult children; various immigration applications and petitions; financial and medical records; birth certificates and identification cards; and documents pertaining to the applicant's inadmissibility and prior removals. The entire record was reviewed and considered in rendering this decision on the appeal.

The AAO notes that the District Director erred in finding the applicant inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), as an alien previously ordered removed under section 235(b)(1) or any other provision of law, and who attempts to re-enter the United States without being admitted. While the applicant was the subject of two expedited-removal orders issued in 1998 and 2000, respectively, the record does not indicate that she ever entered or attempted to enter the United States thereafter without being admitted or inspected. Instead the record shows that on August 22, 1998 and July 31, 2000, the applicant was charged as an arriving alien who presented herself at a designated port of entry for inspection and admission. That she did so by misrepresenting her identity and presenting documents not lawfully issued to her resulted in her expedited removal but did not render her inadmissible under section 212(a)(9)(C). The AAO, therefore, withdraws the finding of the District Director that the applicant is ineligible for relief under section 212(a)(9)(C) of the Act.

The applicant is inadmissible, however, under section 212(a)(9)(A) of the Act, which states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five 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.

...

- (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.

The AAO finds both that the applicant is inadmissible under Section 212(a)(9)(A)(i) and that she is eligible under the exception in section 212(a)(9)(A)(iii) of the Act to seek permission to reapply for admission into the United States. The record shows that the applicant was ordered removed by an immigration judge on August 10, 2000, for a period of 20 years, as a consequence of having been previously removed from the United States in 1998. The District Director's statement that the applicant cannot receive permission to reapply for admission until 20 years have passed since her last departure from the United States is incorrect. While the applicant is barred from entering or being in the United States for a 20-year period beginning August 10, 2000, she may request permission to reapply for admission pursuant to section 212(a)(9)(A)(iii) of the Act.¹

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

- (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,

¹ The AAO notes that while the applicant is eligible under section 212(a)(9)(A)(iii) to file a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), doing so at this time would serve no purpose. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, where no purpose would be served in granting the application. As the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, no purpose would be served in adjudicating Form I-212.

or admission into the United States or other benefit provided under this Act is inadmissible.

The record shows that on August 22, 1998, the applicant applied for admission to the United States at the San Ysidro, California, port of entry by presenting entry documents bearing another individual's name. The applicant was expeditiously removed the following day. On July 31, 2000, the applicant again applied for admission to the United States at the same port of entry, this time by presenting an I-551 permanent resident card not lawfully issued to her. The applicant was ordered removed by an immigration judge on August 10, 2000 and was removed the same day to Mexico, where she has remained since. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. She requires a waiver under section 212(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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only 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-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 applicant’s spouse is a 62 year-old native of Mexico and lawful permanent resident of the United States who asserts that the applicant’s inadmissibility causes him emotional, physical and economic hardship. While the applicant’s spouse avers that separation from the applicant affects him financially, he does not describe the economic impact of their separation. The record includes a copy of an April 2008 paystub and two W-2 Wage and Tax Statements from 2005 and 2006, but it lacks an explanation of his expenses and how specifically the applicant’s absence has caused him financial hardship.

The applicant’s spouse also indicates that he has been living apart from the applicant since 1976. He states that he needs her by his side because she alone knows how to take care of him and because his health has declined, he needs to eat homemade meals. In a May 5, 2008 letter, a Tijuana-based physician writes that the applicant’s spouse is under medical treatment for dyslipidemia, urinary infection, and peptic acid disease; is in good shape physically; does not

show any cardiac, pulmonary or degenerative disease; and is on a restricted diet of 1,800 calories. The evidence does not demonstrate that the applicant's spouse has physical disabilities or limitations, that he requires special assistance, or that he cannot care for himself in the applicant's absence. Concerning his emotional hardship, the applicant's spouse maintains that he needs the applicant because he does not have anyone to talk with and their children and grandchildren need her so they can be together as a family.

The applicant's adult children indicate in their letters that they have only seen their mother once or twice per month since 1999 and, like their father, they love and miss her very much. They want the applicant to be in the United States so her grandchildren can get to know her and she can care for them while their wives return to work. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. While separation from the applicant has been a challenge for her three adult sons, the evidence is insufficient to establish that their hardships result in added hardship to the applicant's spouse. While the AAO recognizes that the applicant's spouse loves and misses the applicant, has experienced difficulties related to their separation and desires her admission to reunite with their family, the evidence does not distinguish these challenges from those ordinarily associated with a loved one's inadmissibility.

The AAO acknowledges that separation from the applicant has caused difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme-hardship standard.

The possibility of the applicant's spouse relocating to Mexico has not been addressed in the record, and thus the AAO cannot speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's qualifying relative spouse would suffer extreme hardship were he to relocate to Mexico to be with her.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.