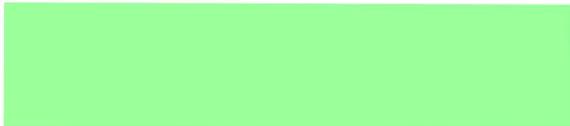




**U.S. Citizenship
and Immigration
Services**

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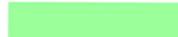


Date:

SEP 20 2013

Office: SAN JOSE

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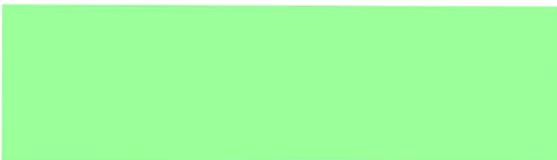


IN RE: Applicant:



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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California and 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 under 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 attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility 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 Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 16, 2012.

On appeal counsel submits a brief, medical documentation pertaining to the applicant and his spouse and a request by counsel to the Social Security Administration, dated November 16, 2012, for the release of any information regarding the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

....

- (iii) 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.

The record establishes that the applicant attempted to procure entry to the United States in December 1996 by presenting an altered Form I-551 stamp. The applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation.

The AAO notes that in December 1996, the applicant was convicted of Knowingly Possessing a False Identification Document with the Intent that Such Document be Used to Defraud the Government, a violation of section 1028(a)(4) of Title 18 of the United States Code. *See Judgment in a Criminal Case*, dated December 12, 1996. 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 sections 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.

On appeal, counsel references that the applicant never made an illegal re-entry to the United States after he was deported in December 1996. Counsel contends that the applicant procured entry to the United States in 1999 after being granted parole. *See Brief in Support of Appeal*, dated January 12, 2013. The record reflects that the applicant was deported on December 24, 1996. *Order of the Immigration Judge*, dated December 24, 1996 and *Notice to Alien Ordered Excluded by Immigration Judge*, dated December 24, 1996. In September 1997, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status. On said form, the applicant indicated that he had entered without inspection on January 15, 1997 and was currently residing in San Jose, California. Subsequent to the Form I-485 filing, in May 1998 the applicant was issued a Form I-512, Authorization for Parole of an Alien into the United States (Form I-512) and utilized the Form I-512 to travel abroad. The applicant returned to the United States with the Form I-512 on July 5, 1998. In October 1999, the applicant was issued a second Form I-512 and utilized the Form I-512 to travel abroad. The applicant returned to the United States with the Form I-512 on December 8, 1999. *See Form I-512*, dated October 19, 1999.

The AAO notes that the record is unclear as to when in 1997 the applicant entered the United States and the applicant has not provided any specific evidence of his entry. As noted above, on the Form I-485 filed in September 1997, the applicant indicated he entered the United States without being admitted on January 15, 1997. In a sworn statement provided by the applicant on July 5, 2011, the applicant stated that he entered the United States without inspection in November 1997. On the Form I-485 the applicant filed in June 2002, the applicant indicated that he entered the United States without inspection in June 1997. Irrespective of which month in 1997 the applicant entered without inspection, contrary to counsel's assertion the record establishes that the applicant did in fact enter the United States without being admitted in 1997, prior to being issued parole approvals by the USCIS in May 1998 and October 1999.

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 or his siblings 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-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 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 were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration, the applicant's spouse explains that she has been trying for the last fifteen years to assist her husband in adjusting his status but has been unsuccessful. She contends that were he to relocate abroad, she would not be able to care for herself because she is ill and the applicant is her sole caretaker. She further asserts that she needs her husband to remain in the United States to help supplement her income. *See Declaration from* [REDACTED]

To begin, the record does not establish that the applicant's spouse's emotional hardship would be beyond the normal hardships associated when a spouse relocates abroad due to inadmissibility. The record fails to indicate that the applicant's spouse would be unable to travel to Mexico to visit her husband. 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)). Further, with respect to the applicant's spouse's illnesses and her assertion that she needs her husband to take care of her, the AAO notes that although medical records have been provided establishing that the applicant's spouse is taking medications for diabetes, cholesterol, blood pressure, itching, acid reflux, dizziness, bones and heart, no letter has been provided on appeal from the applicant's spouse's treating physician establishing the applicant's spouse's current medical situation, the severity of her conditions, any limitations on her ability to care for herself, the treatment plan and what specific hardships the applicant's spouse will encounter were her husband to relocate abroad. Finally, regarding the financial hardship referenced, no documentation has been provided on appeal establishing the applicant's spouse's income and expenses and assets and liabilities to establish that the applicant's relocation would cause his wife financial hardship. Alternatively, it has not been established that the applicant would be unable to obtain gainful employment abroad that would permit him to assist his wife financially should the need arise. It has thus not been established that the applicant's spouse

would experience extreme hardship were she to remain in the United States while her husband relocates abroad as a result of his inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse maintains that she will not be able to receive social security were she to relocate to Mexico. *Supra* at 1. No supporting documentation to support the applicant's spouse's assertion has been provided. Counsel further contends that the applicant's spouse would not be able to get adequate health care were she to relocate to Mexico and she would not be able to receive social security benefits. *See Form I-290B*, dated November 16, 2012. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, it has not been established that the applicant's spouse would experience extreme hardship were she to relocate abroad to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's 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 and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rises 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.