



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **APR 07 2014**

Office: SEATTLE [REDACTED]

IN RE: Applicant: [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 Field Office Director, Seattle, Washington, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The motion before the AAO was granted and the prior decision of the AAO to dismiss the appeal was affirmed. The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO to dismiss the appeal will be affirmed.

The record establishes that the applicant is a native and citizen of Mexico who was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The record reflects that the applicant entered the United States using a passport and visa issued in another name. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her lawful permanent resident spouse and U.S. citizen children.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated October 23, 2012.

A subsequent appeal was dismissed by the AAO based on a finding that extreme hardship to a qualifying relative had not been established. *See Decision of the AAO*, dated September 9, 2013.

A motion was granted by the AAO and the prior decision of the AAO to dismiss the appeal was affirmed based on a finding that extreme hardship to a qualifying relative had not been established. *See Decision of the AAO*, dated January 24, 2014.

On motion counsel for the applicant submits the following: a brief, dated February 21, 2014; an affidavit from the applicant's spouse; support letters from the applicant's pastor and daughter; financial documentation; mental health documentation pertaining to the applicant's son, [REDACTED] a copy of a letter from January 24, 2011 from [REDACTED]; medical documentation pertaining to the applicant's daughter, [REDACTED] and a confirmation of employment letter for the applicant's 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.

Section 212(i) of the Act provides that:

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.

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, parent or child of the applicant. In the present case, the applicant's lawful permanent resident spouse is the only qualifying relative. Hardship to the applicant, the children, one of the children's girlfriend or a grandchild, 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.

On appeal, the AAO found that the record failed to establish that the applicant's spouse would suffer extreme hardship as a consequence of being separated from the applicant. To begin, the record failed to establish that the applicant's children suffered from medical or mental health conditions that would cause hardship to the applicant's spouse in the applicant's absence or that the applicant's separation from her children would otherwise cause hardship to the spouse that rose to the level of extreme. Further, the record failed to establish that alternate forms of transportation were not available to take the children to school and activities. In addition, the AAO stated that the record contained no supporting documentation evidencing any emotional hardships the spouse would experience due to separation from the applicant and how such emotional hardships were outside the ordinary consequences of removal. Finally, the record failed to establish that the applicant's spouse would experience financial hardship as a result of his wife's inadmissibility. *See Decision of the AAO*, dated September 9, 2013.

On motion, the AAO found that counsel had not provided any financial documentation to establish that the applicant's relocation abroad would cause financial hardship to her husband. As for the emotional hardship referenced, the documentation provided by [REDACTED] established that the family was close and the applicant played an important role in the family dynamics. However, the AAO noted that the applicant had not established that her spouse would be unable to provide the necessary emotional and physical support to the children and grandchild were she to relocate abroad. Further, although the psychological evaluation stated that their daughters suffered from medical and psychological conditions requiring frequent medical appointments and, for their younger daughter, counseling appointments and the care of a cardiologist to determine the cause of fainting spells, the record did not contain documentation establishing they suffered from these conditions and were receiving any ongoing treatment. Further, the AAO references that [REDACTED] was in his 20's and had a girlfriend that lived with him, [REDACTED] attended college, and [REDACTED] were teenagers and the applicant had not established that the older children

would not be able to assist their father should the need arise. Nor had the applicant submitted any documentation of her husband's work hours to support the assertion that he would not be able to make alternate arrangements in light of his wife's absence. *Supra* at 4-5.

With the instant motion, a declaration has been provided from the applicant's spouse outlining the role his wife plays in the family dynamic. The applicant's spouse maintains that she is an excellent person that cannot be replaced. He references that she is the central person in the family of 9 and he requires his wife's presence and assistance to make a good home for the children. The applicant's spouse contends that he will experience extreme and tremendous stress without his wife and will not be able to function well at his job and properly feed and shelter his children. *See Letter from* [REDACTED] dated February 19, 2014. The AAO acknowledges the applicant's spouse's contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, but the record does not establish the severity of this hardship or the effects on his daily life. As previously noted by the AAO, the children are in their teen years or older. The record does not establish that their father is unable to provide the assistance they may need. Further, while counsel has submitted a statement pertaining to the applicant's son's, [REDACTED] mental health issues, the letter, written in 2010, establishes that he was seen for treatment from July 2005 to September 2005 and again from August 2009 to September 2009, more than four years ago. *See*

[REDACTED] dated September 13, 2010. The record does not establish his current mental health situation and what hardships he will experience if his mother relocates abroad. As for the documentation submitted on motion regarding [REDACTED] for abdominal pain, the instructions confirm that the condition does not seem serious. *See General Instructions-* [REDACTED] dated February 5, 2014. No documentation has been provided from Luz's treating physical outlining the hardships Luz will experience were her mother to relocate abroad. Finally, while documentation has been provided establishing that the applicant's spouse is gainfully employed as a full time molder, the record does not establish that he will experience professional hardship were his wife to relocate abroad. Alternatively, the applicant has not established, based on his income of \$22.50 per hour, that he would not be able to travel to Mexico, his native country, to visit her. On motion, it has not been established that the applicant's spouse will experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility.

On motion, the AAO found that the applicant had established that her lawful permanent resident spouse would experience extreme hardship were he to relocate abroad to reside with the applicant as a result of her inadmissibility. *Supra* at 5. This criterion will thus not be re-addressed.

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.

On motion, the record, reviewed in its entirety, 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 he 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 he 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 motion will be granted and the prior decision of the AAO to dismiss the appeal will be affirmed.