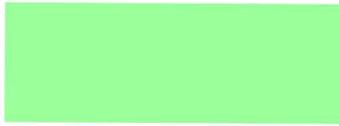
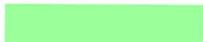


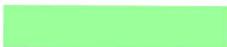
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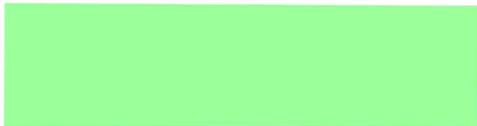
U.S. Citizenship
and Immigration
Services



Date: **AUG 26 2014** Office: PHOENIX, AZ FILE: 

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

The applicant is a native and a 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). He is the spouse of a U.S. citizen and has two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the application on December 31, 2012.

On appeal, counsel for the applicant asserts that the denial of the applicant's waiver will result in extreme hardship to the applicant's spouse because the applicant provides financial, educational and emotional support for his spouse and daughters.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant and his spouse; tax returns for the applicant's spouse; an employment letter for the applicant's spouse; medical records related to the applicant's daughter; medical documents related to the applicant's spouse; a psychological examination of the applicant's spouse; school records and birth certificates for the applicant's children; and photographs of the applicant, his spouse and their family.

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

- (i) 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 chapter is inadmissible.

The record indicates that the applicant failed to reveal that he had an arrest record when interviewing for his adjustment of status application. The record indicates that the applicant was arrested on June 21, 1996 for Driving While Ability Impaired; On August 19, 2000 for Driving Under the Influence of Liquor, Driving with No Insurance, Possession of a Forgery Instrument, and Driving With No License; November 16, 2000, for Driving Under the Influence; and on September 12, 2003, for Assault in the Third Degree. The applicant was provided an opportunity to provide court records related to his arrests in order to establish he was admissible and failed to do so. The applicant does not contest that he is inadmissible due to misrepresentation for having failed to reveal his arrest record.

As the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) for misrepresentation we will examine the merits of his application under section 212(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or their children 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 entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts on appeal that the applicant’s spouse will experience extreme hardship if the applicant’s waiver is denied. He states that the applicant provides financial and educational support to his daughters, as well as fatherly guidance. He states that the applicant transports his daughters to school functions and activities, and that he attends parent-teacher conferences. Counsel also states that the applicant’s spouse is suffering emotional hardship and has been diagnosed with Major Depression and Anxiety.

The record contains a psychological examination of the applicant’s spouse. The report states that several tests were administered to the applicant indicating that she was experiencing symptoms of Major Depressive Disorder, Severe with Psychotic Features, Obsessive Compulsive Disorder and Generalized Anxiety Disorder. The report states that the applicant’s spouse has suffered from crying spells, restlessness and excessive worry.

The report also concludes that the applicant’s older daughter is experiencing symptoms of Separation Anxiety Disorder, and states that children who experience separation anxiety are at higher risk of developing a mental disorder. While we are sympathetic to the impacts on the applicant’s children, they are not qualifying relatives so the hardship to the applicant’s daughter due

to separation anxiety will be considered as it relates to the the applicant's spouse as she would be the child's only parent upon separation.

The record contains other medical documents related to the applicant's spouse. These documents are in the form of visitation reports from the applicant's spouse's primary care physician's office. There is no statement in plain language which outlines the applicant's spouse's medical conditions, prognosis or the impact any medical condition may have on her ability to function on a daily basis. The documents reference rheumetoid arthritis and migraine headaches and a prescription medication to treat her arthritis. The submitted documentation does not make clear the level of hardship caused by her condition, or how the applicant's absence would impact the applicant's spouse's ability to receive treatment for her condition.

The record contains sufficient documentation to establish that the applicant's spouse will experience some emotional hardship due to the applicant's inadmissibility. However, the evidence submitted in regard to the psychological hardship does not make clear exactly how the applicant's spouse's psychological hardship has or will affect her ability to function on a daily basis. The record indicates that the applicant's spouse has maintained her employment and college classes, despite her psychological hardship.

The record contains tax records and an employment letter for the applicant's spouse. These documents establish that the applicant's spouse has been employed as a Teacher's Assistant since 2002. There are no employment records for the applicant and it is not clear that he has made any financial contribution to support his family. Nor are there any documents establishing a clear picture of their expenses. We cannot determine what financial hardship the applicant's spouse would experience without the applicant present.

While counsel has asserted that the applicant supports the household by caring for their children, it is not clear that the applicant's spouse would not be able to obtain child care services in order to mitigate the impacts of separation if the applicant were removed. The applicant and his spouse have both indicated that they have family ties in the United States, possibly mitigating the impacts of the applicant's departure.

Based on these observations, there is insufficient evidence to establish that the psychological hardship alone constitutes extreme hardship. The record is unclear with regard to the financial hardship the applicant's spouse will experience, thus, even when the hardships upon separation are considered in the aggregate the record fails to establish that the hardships on the applicant's spouse rise to the level of extreme.

Counsel states that the applicant lacks family ties in Mexico and does not have the financial means to relocate his family to Mexico. He states that the applicant's spouse has family ties to the United States that would have to be severed, and that the applicant's spouse fears for her safety in Mexico and would likely remain in the United States with her daughters. Counsel also states that it would be a hardship to relocate the applicant's daughters to Mexico because they are enrolled in school in the United States, have never been to Mexico and would lose the educational opportunities available in the United States.

The applicant's spouse has also submitted a letter stating that she would fear living in Mexico due to crime and poverty, and that her daughter has a chronic condition which requires medication that would be impossible to get in Mexico.

The record contains medical records pertaining to the applicant's daughter indicating she suffers from allergies. The psychological examination submitted into the record also indicates she suffers from anxiety. However, there is no evidence in the record supporting the assertion that it would be impossible or even difficult for her to obtain necessary medicines or medical treatment in Mexico. We acknowledge that parts of Mexico suffer from drug related violence, but the record does not contain any evidence as to where the applicant or his spouse might choose to live and whether these areas are particularly affected by drug violence.

The record does not contain any evidence that the applicant's daughters would be unable to attend school in Mexico. The record also lacks any evidence that the applicant's spouse would not be able to obtain employment in Mexico to support his family. The applicant's spouse has expressed fear of the conditions in Mexico, but there are no country conditions materials submitted into the record and it is unclear that they would be impacted by such violence. Without evidence which more specifically addresses and supports the assertions of hardship on appeal, the record does not establish that the applicant's spouse would experience extreme hardship upon relocation.

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 faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from her spouse; however the record is unclear with regard to any uncommon financial or physical hardships to her or the applicant's children. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.¹

¹ As noted previously, the applicant has not submitted documentation regarding the resolution of his various arrests. It is, therefore, not possible to determine whether he has been convicted of any Crimes Involving Moral Turpitude (CIMT) which would be a further ground of inadmissibility pursuant to the provisions of section 212(a)(2)(A) of the Act. Any future filings by the applicant should provide documentation regarding his criminal arrests sufficient for USCIS to determine whether or not he has been convicted of CIMTs.

(b)(6)

NON-PRECEDENT DECISION

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Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.