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

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 05 2014 Office: TUCSON FIELD OFFICE 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:

SELF-REPRESENTED

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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tucson, 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 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his lawful permanent resident spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated June 9, 2014.

On appeal the applicant contends that his spouse would suffer extreme hardship as a consequence of his inadmissibility. With the appeal the applicant submits statements from his spouse and himself, letters of support from family and friends, medical documentation for the spouse, and documentation regarding the applicant and his spouse as foster parents. The record contains medical documentation for the applicant's son, a psychological evaluation of the applicant's spouse, financial documentation and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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.

The record reflects that the applicant entered the United States without inspection in 1989, and he stated during his interview for adjustment of status that since that time he has departed and returned to the United States multiple times, most recently on July 8, 2007, using a B1/B2 border crossing

card issued in 2001. The applicant stated that on occasions when asked by U.S. Customs and Border Protection (CBP) agents the purpose of his visit, he indicated that it was to visit when in fact he was returning to his residence in the United States. Based on this information the field office director determined the applicant was inadmissible for fraud or misrepresentation. The record also reflects that following his arrest by CBP agents on August 23, 2004, the applicant was granted voluntary departure to Mexico by an immigration judge on July 27, 2005 and subsequently departed the United States on August 25, 2005. The applicant stated at his adjustment of status interview that he had not informed the immigration judge that he possessed a border crossing card. The applicant has not contested the field office director's finding of inadmissibility.

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 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-Moralez,* 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. *Salcido-Salcido v. INS*, 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 spouse states that the applicant is her strength and that she cries herself to sleep worrying about what will happen to her children if the applicant is gone and she has to raise her children by herself. She states that it is difficult to work and send the children to school and take them places, and that her children are used to being together so it will break their hearts to be separated. She further states that after having a miscarriage she could not recover from depression until she and the applicant became foster parents, but if the applicant returns to Mexico the foster child would go back into foster care and she would suffer thinking about what will happen to her family. The applicant states that they want to adopt their foster child, but would be unable to do so if the waiver is denied. He states that he fears his spouse will go back into the depression she had with the loss of their baby and might do something to harm herself. He also states that their first child has had open heart surgery and that his spouse needs his support and help raising children.

A letter from a medical social worker states that the applicant's son was diagnosed with supracristal ventricular septal defect and had surgery in 2010, was last seen by cardiology in March 2013, and recommended to follow up two years later, sometime in 2015. The record contains no medical records or statement from a physician explaining the son's current conditions, problems, or prognosis.

A psychological evaluation of the applicant's spouse states that she, her mother, and siblings live in the same neighborhood, and that she also has extended family and is close to her maternal grandmother. The evaluation states that the spouse reports the applicant as primarily responsible for household duties including cleaning, cooking, shopping, and paying bills, and that he is the main

caregiver for the children. It states the couple's son has a heart condition needing ongoing medical supervision and that they also care for a child removed from his parents. The evaluation states that the spouse reports stress over uncertainty with the applicant's immigration application and that she reports sadness, pessimism, and a lack of pleasure, and that she feels irritable with reduced energy, disturbances in sleep and appetite, and concentration problems at work. It surmises that separation will cause significant emotional, occupational, and social difficulties detrimental to the spouse's emotional well-being and that the children would experience similar symptoms if separated from their father. The evaluation concludes that the spouse's psychological profile is consistent with an adjustment disorder with mixed emotions of anxiety and depression.

Although we recognize that the applicant's spouse will endure some hardship as a result of long-term separation from the applicant, the statements by the applicant and his spouse and the evaluation provided fail to establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible.

The spouse states that without the applicant she would be unable to deal with economic issues and pay for everything on her own, and that she cannot pay for two households if the applicant is in Mexico. Documentation submitted to the record shows the spouse's income, along with utility bills from 2011 submitted in support of the applicant's adjustment application. However, no documentation has been submitted to show the spouse's overall financial situation or any contribution by the applicant to establish that without the applicant's presence in the United States, the applicant's spouse would suffer financial hardship. It has also not been established that the applicant would be unable to support himself while in Mexico, thereby ameliorating the hardships referenced by the applicant's spouse with respect to having to maintain two households. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

We find that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant. Further, the record shows that the applicant's spouse has immediate and extended family living near her to provide support for her.

We do find, however, that the record establishes that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico to reside with the applicant. The applicant states that he does not want his family in Mexico because it is dangerous. The psychological evaluation states that the applicant's spouse is worried about moving to Mexico at the expense of losing ties to her family and community in the United States. According to the evaluation the spouse believes that if she relocated to Mexico it would be impossible for her and her children to have the same standard of

living because salaries are lower and unemployment rates higher. The evaluation indicates that the spouse states it would impact her ability to obtain medical health coverage for her son, that her children would be unable to benefit from the educational opportunities available in the United States, and that she is concerned about crime, fearing her children would be victims.

The record indicates that the applicant and his spouse both are originally from the state of Sonora. The U.S. Department of State warns U.S. citizens about the risk of traveling to certain places in Mexico due to threats to safety posed by organized criminal groups and that U.S. citizens have been the target of violent crimes. It notes that Sonora is a key region in the international drug and human trafficking trades and can be extremely dangerous for travelers. *See* Travel Warning - U.S. Department of State, dated October 10, 2014.

The record establishes that if the applicant's spouse were to relocate to Mexico she would have to leave her family, most notably her mother and siblings, her community, and her employment, and she would be concerned about her safety and financial well-being as well as the health and safety of her children, particularly her son who has had heart surgery. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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.

We therefore find that the applicant has failed to establish extreme hardship to his spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.