

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



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 13 2014

Office: TUCSON

[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,

[Handwritten signature]

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tucson, Arizona. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior decision of the AAO is affirmed.

The applicant is a native and a 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 procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated December 6, 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 June 28, 2013.

In support of the instant motion, counsel for the applicant submits the following: the Form I-290B, Notice of Appeal or Motion, a letter from the applicant's spouse, medical documentation pertaining to the applicant's spouse, and financial documentation. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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:

- (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 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 (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...

With respect to the field office director's finding that the applicant is inadmissible for fraud or willful misrepresentation, the record indicates that the applicant began residing in the United States in 2002 at the age of 13. He returned to Mexico in 2007 and on or about December 4, 2007, at the age of 18, he applied to renew a Border Crosser Card. He represented that he resided in Mexico, when in fact he had been residing in the United States for years. The applicant would not have been eligible for a B nonimmigrant visa had he revealed that he intended to use it to enter the United States to resume his indefinite residence. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C) of the Act for seeking a visa through willful misrepresentation of a material fact.

On motion, counsel first asserts that children are incapable of forming intent to defraud and should not be deemed inadmissible. Counsel references *Singh v. Gonzales* and its proposition that the imputation of fraudulent conduct to children is not a reasonable extension of case law. *See Form I-290B*, dated July 28, 2013. In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that imputing fraud to a five-year-old child was "even further beyond the pale," than imputing a parent's negligence to that child. 451 F.3d 400, 405-407 (6th Cir. 2006). The applicant's situation is distinguishable to that in *Singh* as the applicant committed the fraud himself and he was 18 years old at the time of the fraud. *See Malik v. Mukasey*, 546 F.3d 890, 892-893 (7th Cir. 2008) (17-year-old brothers whose father had misrepresented their names, nationality, and religious affiliation on his asylum application could be held accountable as they perpetuated the fraud in preliminary removal hearing.). In deciding *Malik*, the Seventh Circuit specifically noted that young was a "relative term and that "[b]eing over 16 - and eligible for a driver's license - is quite different than being 10." *Id.*, at 892.

In the present case, the applicant was 18 years old at the time he applied for a nonimmigrant visa. The record includes the completed Form DS-156, Nonimmigrant Visa Application. On the DS-156, the applicant stated that he was residing and studying in Mexico and noted that he had only been in the United States for one day, in July 2007. The applicant further certified that the answers provided were true and correct by signing the form on December 4, 2007. At the age of 18, the applicant, like the respondents in *Malik v. Mukasey*, was old enough to understand what he was doing was wrong. Further, at the applicant's I-485 interview, he admitted that he failed to disclose that he was living in the United States when he applied for the nonimmigrant visa in 2007 because he was afraid the visa would be refused. Accordingly, we find that the applicant's actions with respect to his nonimmigrant visa application in December 2007 constituted a willful misrepresentation under 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant 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. 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.

On appeal, the AAO found that it had not been established that the applicant's spouse would experience extreme hardship were she to remain in the United States while the applicant resided abroad due to his inadmissibility. *Supra* at 5. On motion, the applicant's spouse details that her daughter was born on May 31, 2013 and as a result, she is experiencing Postpartum Depression and is currently taking Citalopram, an anti-depressant. The AAO notes that the documentation provided establishes that the applicant's spouse was prescribed 30 tablets and one refill. The letter from [REDACTED] does not establish the severity of the situation, the short and long-term treatment plan, and what specific hardships the applicant's spouse will face were the applicant to relocate abroad. The AAO acknowledges the applicant's spouse's contention that she will experience emotional hardship were she to remain in the United States while her husband relocates abroad, but the record does not establish the severity of this hardship or the effects on her daily life. Furthermore, although a household monthly budget has been provided noting income of \$1600, it is unclear to the AAO if it is the applicant or his spouse who is earning this income. Nor has it been established that the applicant is unable to obtain gainful employment in Mexico that would permit him to assist his wife financially should the need arise. Finally, although the applicant's spouse states that she is in the process of helping her brothers and sister come to the United States but needs her husband to help her care for her siblings, no documentation has been provided regarding the siblings' ages, what needs they have, when they will reside in the United States, and what specific assistance the applicant's spouse will need in terms of their daily care.

The AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse will experience extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility.

In regard to hardship were the applicant's spouse to relocate abroad to reside with the applicant due to his inadmissibility, on appeal the AAO noted that the applicant had not submitted any evidence to establish that he and his family would have to reside in an area of Mexico affected by the current drug-related violence. *Supra* at 5. On motion, the applicant's spouse details that she does not know how she would continue to receive treatment for her depression or how she would obtain follow up pediatric care for her child in Mexico. Further, the applicant's spouse states that she is a proud American and is unfamiliar with the country, culture and customs of Mexico. She notes that the only family she knows in Mexico is in [REDACTED] and that it is a very violent place, and she would not feel safe there with the baby. No supporting documentation has been provided by counsel on

motion establishing the specific hardships the applicant's spouse states she will experience were she to relocate abroad. 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)). As such, it has not been established that the applicant's spouse would experience extreme hardship were she to relocate to Mexico to reside with the applicant as a result of his inadmissibility.

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 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 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 she 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 is granted and the prior decision of the AAO is affirmed.