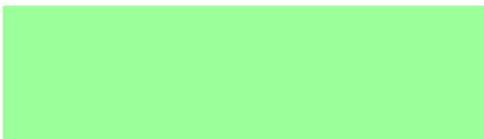


(b)(6)

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

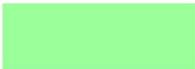


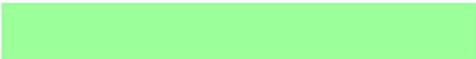
U.S. Citizenship
and Immigration
Services



Date: JAN 24 2014

Office: SEATTLE

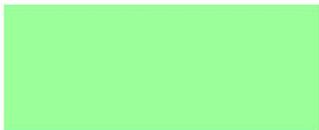
FILE: 

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,

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 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.

On motion counsel for the applicant contends that the AAO failed to consider all evidence in support of the appeal. Counsel further maintains that the AAO erred by not finding that extreme hardship to a qualifying relative had been established. In support, counsel submits the following: a brief, dated October 25, 2013; an affidavit from [REDACTED] dated July 23, 2013; a mental health evaluation from [REDACTED] dated July 23, 2013; a copy of the first page of counsel's supplemental brief with an AAO date stamp of July 29, 2013; and a redacted AAO decision from May 2008. 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-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. *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.¹ *See Decision of the AAO*, dated September 9, 2013.

On motion, counsel has 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, counsel has submitted copies of documents submitted to the AAO in July 2013. The documentation provided by [REDACTED] who met with the family on two separate occasions three years apart for a total of six hours, establishes that the family is close and the applicant plays an important role in the family dynamics. However, the applicant has 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. The psychological evaluation states that their daughters suffer 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. As noted in the prior AAO decision, the record does not contain documentation establishing they suffer from these conditions and are receiving any ongoing treatment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165

¹ The decision noted that although the applicant's spouse had stated they lost a home to foreclosure and had filed for bankruptcy, no evidence had been submitted to support this assertion or to document the spouse's current income or the family's expenses.

(Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes that [REDACTED] is in his 20's and has a girlfriend that lives with him, [REDACTED] attends college, and [REDACTED] and [REDACTED] are teenagers. The applicant has not established that the older children would not be able to assist their father should the need arise. Nor has 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. 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.

The AAO found that the record failed to establish that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant. The AAO noted that no documentation establishing that the applicant's spouse would be unable to obtain gainful employment in Mexico had been provided. Nor had counsel provided country condition evidence to establish that the safety and economic concerns would rise to the level of extreme hardship to the applicant's spouse. *Supra* at 6.

On motion, Mr. [REDACTED] contends that the applicant's spouse would have no job opportunities in [REDACTED] the children would experience hardship as there would be no way to support them, schools and hospitals are three hours away and there would be no opportunities for ongoing counseling should any of the children require counseling in the future. *See Mental Health Evaluation from [REDACTED]* dated July 23, 2013. The record establishes that the applicant's spouse, currently in his 50s, became a permanent resident of the United States in 1987, more than fifteen years ago. He has been gainfully employed for over twenty-five years as a molder with [REDACTED] and has lived in the same community since July 1996. *See Form G-325A, Biographic Information*, dated June 23, 2010. The applicant's spouse has significant community and family ties, including the presence of his children and grandchild. Additionally, as he notes in a declaration, were he to relocate to Mexico with the applicant on a long-term basis, he would be at risk of losing his permanent resident status in the United States. *See Declaration of [REDACTED]* [REDACTED] dated September 22, 2010. Based on a totality of the circumstances, the applicant has established that were her spouse to relocate abroad as a result of her inadmissibility, he would experience extreme hardship.

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.