

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: **JUL 15 2014**

Office: FRESNO, CA

FILE: [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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, California, 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 entered the United States using a visa under a false name. The applicant 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 son of a U.S. citizen and has one U.S. citizen daughter. 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 Field Office Director concluded that the applicant had failed to establish that the bar to the applicant's admission would impose extreme hardship on a qualifying relative, his U.S. citizen parents, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 27, 2013.

On appeal, counsel for the applicant asserts that the hardship of family separation should be considered in weighing extreme hardship, that the applicant's child has health issues, that the country conditions in Mexico would present hardships, that the applicant's parents would have to sever their family ties in the United States and that there would be economic hardship in the United States if the applicant were removed. Counsel asserts that these hardship impacts should be considered in their totality and the applicant's waiver application should be approved.

The record contains, but is not limited to, the following documentary submissions: a statement from the applicant's mother; a statement from [REDACTED] pertaining to the medical conditions of the applicant's child; and country conditions materials detailing the socio-economic and political conditions in Mexico.

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's grandparents obtained a B1/B2 visa under a false name which was used to obtain entry for the applicant. The applicant has used this visa on a number of occasions, most recently in 2012 when he was 20 years old. As such, the applicant's identity, a material fact, was misrepresented when the applicant entered the United States. The applicant is inadmissible pursuant to section 212(a)(6)(C)(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 mother 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.

The record contains a letter from the applicant explaining that his daughter has a serious medical condition which requires treatment in the United States, something that would be difficult to do if he had to leave his daughter behind to relocate. He states that he already spent substantial time away from his parents when he was young, and that to separate from them again would impact them greatly.

The record also includes a statement from the applicant’s mother explaining that she would experience emotional hardships if her son had to relocate to Mexico. She notes that the applicant’s daughter, her granddaughter, has a medical condition requiring treatment in the United States and that the applicant would have no family ties in Mexico. She also notes that their home province in Mexico, where the applicant would likely have to reside, has been particularly hard hit by the narco-related violence waging in Mexico.

The record contains a statement from [REDACTED], located in [REDACTED] California, stating that the applicant’s daughter has been found to be infected with tuberculosis bacteria, and must begin a nine-month treatment program to rid her body of the bacteria. The applicant indicated that his child’s mother resides in Mexico, complicating the applicant’s ability to leave his child in the United States to receive proper medical treatment. However, the record is not clear as to who would assume responsibility for the child if the applicant were removed and his daughter remained in the United States, or even where the child is currently living. The applicant indicated that he was not happy with the way the child’s mother cares for her and the letter from [REDACTED] states that the program should begin when the child returns to the United States. It therefore appears that the child resides with her mother in Mexico at least part of the time. Because it is unclear what level

of responsibility the applicant's mother would take on it cannot be determined that the applicant's departure would result in hardship to the qualifying relative in this case, the applicant's mother. Further, there is nothing in the record to establish that the applicant has resided in the United States for any length of time. His passport indicates several entries and exits and his Form G-325 (biographical questionnaire) indicates that he resided in Mexico from 1992 to 2012. There is nothing to indicate how his mother relies on him or what hardships his departure would cause.

The applicant has submitted background information on the country conditions in Mexico, including the violence surrounding the drug-war in [REDACTED] his likely place of residence upon return. While the record establishes that the conditions in Mexico are dangerous, it is unclear what impact this would have on the qualifying relative in this case, his mother, since he appears to have spent most of his life living in Mexico.

Even when these hardships are considered in the aggregate, the record fails to establish that the applicant's mother would experience extreme hardship upon separation from the applicant.

An examination of the record reflects that neither counsel for the applicant nor the applicant's mother have clearly articulated what hardship, if any, the applicant's mother would experience upon relocation. While the record indicates that the applicant's mother has community and family ties in the United States, the record fails to establish that she would experience hardship rising to the level of extreme hardship upon relocation.

The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden and the appeal will be dismissed .

ORDER: The appeal is dismissed.