



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **JUL 18 2014**

Office: TUCSON

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,

Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tucson, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.¹ *See Decision of the Field Office Director*, August 1, 2013.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) was incorrect in concluding that the applicant's qualifying relative would not suffer extreme hardship if the applicant is not allowed to remain in the United States.

The record includes, but is not limited to, the following documentation: statements by the applicant's spouse and the mother of the applicant's spouse, financial documentation, information on wages in Mexico, evidence of custody and child support for the daughter of the applicant's spouse, medical documentation for the brother of the applicant's spouse, and country-conditions information on Mexico. 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.

The record indicates that the applicant was issued a Border Crossing Card (BCC) on February 26, 2001. To receive a BCC, the law requires the alien to have a residence abroad that he or she does not intend to abandon. During an interview with a USCIS officer on May 15, 2013, the applicant testified that he entered the United States in or about 2008 and continued to reside in the United States since that time. The record indicates that the applicant's last entry to the United States was on or about January 1, 2011, approximately two months before the expiration

¹ The record indicates that the applicant previously filed a Form I-601 on October 18, 2012. The Field Office Director, Tucson, Arizona, denied the initial Form I-601, finding that the applicant failed to establish that his removal would cause extreme hardship to a qualifying relative. *See Decision of the Field Office Director*, December 20, 2012. There is no indication in the record that the applicant appealed the denial of his first Form I-601.

date of the BCC on February 20, 2011. The applicant testified that between 2008 and 2011 he would occasionally travel to Mexico. The applicant testified that when returning to the United States, when asked about the purpose of his visit by U.S. immigration officials, the applicant would state that he was coming to the United States to go to the store, even though he was residing in the United States at the time. The USCIS officer determined that the applicant made a willful misrepresentation in his responses to U.S. immigration officials in order to gain admission to the United States. The applicant does not contest his inadmissibility.

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

The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 (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.

In a notarized statement dated January 21, 2014, the applicant's spouse states that she is currently not working and that she relies upon the applicant to support her and her daughter. In a previous statement of the applicant's spouse, dated September 18, 2012, the applicant's spouse states that she was not working because she was in college. Financial documentation in the record includes copies of federal income tax returns for 2011 and 2012 filed by the applicant's spouse. The 2012 tax return indicates that the applicant's spouse had an adjusted gross income

of \$14,124. There is no evidence in the record to support the applicant's spouse's claim that she is no longer employed, or any evidence of the applicant's spouse's current assets and liabilities or overall financial picture. In addition, the record includes evidence that the father of the applicant's spouse's child is required to pay child support in the amount of \$331.27 per month. Documentation from the Arizona Department of Economic Security indicates that, although the child's father is in arrears, during 2013 he paid approximately \$1,900 in child support payments.

The evidence submitted to the record is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. 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).

In an undated statement submitted with the applicant's Form I-601 of October 15, 2012, the applicant's spouse asserts that she has been suffering from extreme anxiety at the thought of being separated from the applicant. Although we acknowledge the applicant's contention that his spouse will experience emotional hardship were she to remain in the United States while the applicant relocates abroad, the record does not establish the severity of this hardship or the effects on her daily life. The record does not show that the emotional hardship to the applicant's spouse is extreme, atypical, or unique compared to others separated from a spouse. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

The applicant's spouse further contends that the father of her daughter has made threats against her in the form of following and checking up on her, and that the applicant talked to him and made him refrain from taking these actions. However, there is no evidence in the record to support this contention. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.").

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record lacks sufficient evidence demonstrating that the impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if the waiver application is denied and she is separated from the applicant.

Regarding hardship that the applicant's spouse may experience if she were to relocate to Mexico, the record indicates that the applicant's spouse was born in the United States and has strong family ties in the United States.

Counsel contends that the applicant's spouse fears living in Mexico due to the violence in Mexico, and submits country conditions information regarding the conditions in Mexico, including a newspaper article reporting on the fact that the uncle of the applicant's spouse was murdered in Mexico. We note that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Sonora, where the applicant is from.²

Moreover, although the applicant's spouse has custody of her daughter, the father of the child has visitation rights, and the Parenting Plan of the Family Conciliation Court of the Superior Court of Arizona for Cochise County requires the parents to discuss relocation issues prior to making any commitments to move the child. Counsel states that it would be very difficult to obtain the permission of the child's father for the applicant's spouse to relocate the child to Mexico.

Thus, based on the evidence on the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with the applicant.

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 in 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 relatives in this case.

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.

² As noted by the U.S. Department of State:

Sonora is a key region in the international drug and human trafficking trades, and can be extremely dangerous for travelers. Travelers throughout Sonora are encouraged to limit travel to main roads during daylight hours.