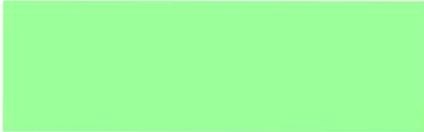


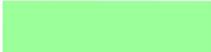


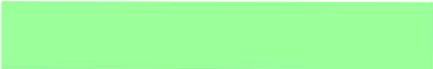
U.S. Citizenship  
and Immigration  
Services

(b)(6)



JUL 30 2014

Date: Office: SAN BERNARDINO 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,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Bernardino, 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 was denied accordingly. *See Decision of the Field Office Director* dated December 11, 2013.

On appeal the applicant contends that his spouse will suffer extreme hardship if he is found inadmissible to the United States. With the appeal the applicant submits a statement; a letter of support from his daughter; financial documentation including tax information for the applicant's spouse and daughter and an offer of employment for the applicant; a notice related to a short sale request for a home with the applicant's son listed as owner; a document showing public assistance for the applicant's family; birth certificates for the applicant's children; school documents for the applicant's son; country information for Mexico; and information about depression, isolation, and divorce. 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 attempted to enter the United States in September 1995 by presenting a valid I-551 legal permanent resident document issued to another person. The applicant has not contested the inadmissibly determination by the director.

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.

On appeal the applicant contends that he and his spouse have five U.S. citizen children and one child who is a lawful permanent resident. He states that he and his spouse are living in a home they purchased with their son's name as owner, but that the son is currently serving in the military and they are unable to make mortgage payments due to his spouse's low wages and the applicant's lack of immigration status. The applicant asserts that with only his spouse's income they are forced to get government low income benefits, but that he has an offer of employment if he obtains evidence of legal immigration status. The applicant asserts that without him his spouse will not have the income to pay rent so she and their children will become homeless. He states that a daughter is attending college but may have to stop if she has nowhere to live and be forced to leave school to find a job to help pay expenses. The applicant further asserts that if he goes to Mexico the distance could terminate the relationship with his spouse and cause divorce. He asserts that separation would also cause mental stress and depression for his spouse and that their son will have psychological problems with feelings of abandonment that the spouse will witness, creating additional emotional distress for her.

The applicant's daughter states that she is going to college and working part time, but does not earn enough to help her mother support the family. She states that it is stressful for her mother to keep the family together financially and that she, the daughter, does not earn enough to survive on her own. The daughter asserts that if the applicant stays in the United States it would fix their financial problems with two incomes instead of one.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant states the spouse will suffer emotionally from separation and submits reports about depression and other emotional issues, but the record contains no detail or supporting evidence specific to the applicant's spouse, including a statement from her, or an explanation of the exact nature of her emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. The assertions made by the applicant and his daughter regarding the spouse's emotional hardships have been considered.

However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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)).

The applicant and his daughter state that the spouse would face financial hardship without applicant. Documents submitted to the record show the incomes of the spouse and her daughter, that the applicant has a job awaiting him if he obtains legal immigration status, and a document showing financial aid through the county. No documentation has been submitted showing the spouse's liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. 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).

The record does establish, however, that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico to reside with the applicant due to his inadmissibility. The applicant states that Mexico is fighting crime and drug cartels so that the spouse would be in constant fear for her safety and that of their youngest son, which would cause her to isolate herself from society to avoid becoming a victim of crime. The applicant also asserts that returning to Mexico would put his spouse back into poverty as reports show that half of the population there lives in poverty. The applicant further asserts that his spouse would lose her current job and her payments towards social security benefits for when she retires, and that she would also not be able to receive healthcare from Medicare when she faces health issues due to aging. With the appeal the applicant submits reports of violence and poverty in Mexico.

The record shows that the applicant and his spouse are from the state of Jalisco, where the U.S Department of State suggests deferring non-essential travel to areas of the state where the security situation continues to be unstable and gun battles between criminal groups and authorities occur. It also recommends against intercity travel at night. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico*, January 9, 2014.

The record shows that by relocating to Mexico the applicant's spouse would have to leave her family, most notably her six children including five born in the United States, and her employment, and that she would be concerned about her safety and her financial well-being, as well as possibly that of her youngest son were he to join her in Mexico. 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 her 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.