

(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

[Redacted]

DATE: JUN 02 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. 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 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.

A motion was granted by the AAO and the prior decision of the AAO to dismiss the appeal was affirmed based on a finding that extreme hardship to a qualifying relative had not been established. *See Decision of the AAO*, dated January 13, 2014.

In support of the instant motion, counsel for the applicant submits the following: medical documentation pertaining to the applicant's U.S. citizen mother-in-law; police reports for theft incidents at the home of the applicant's mother-in-law; and an article regarding the murder of applicant's spouse's cousin and his wife in Nogales, Mexico. 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 fraud or willful misrepresentation.

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 or his U.S. citizen mother-in-law 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 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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.

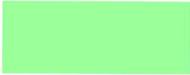
On motion, the AAO found that it had not been established that the applicant's spouse would experience extreme hardship were she to remain in the United States while the applicant resided abroad due to his inadmissibility. To begin, the AAO acknowledged the applicant's spouse's contention that she would experience emotional hardship were she to remain in the United States while her husband relocated abroad, but the record did not establish the severity of this hardship or the effects on her daily life. Furthermore, although a household monthly budget had been provided noting income of \$1600, it was unclear to the AAO if it was the applicant or his spouse who was earning this income. Nor had it been established that the applicant was 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 stated that she was in the process of helping her brothers and sister come to the United States but needed her husband to help her care for her siblings, no documentation had been provided regarding the siblings' ages and specific needs, the expected timing of their arrival in the United States, and the type of assistance the applicant's spouse would need in terms of their daily care. *Supra* at 5.

With the instant motion, counsel has not addressed any of the issues raised by the AAO. Rather, counsel maintains that the applicant's mother-in-law is ill and has been a victim of theft and needs her daughter to assist her. Counsel has not provided any supporting documentation on motion establishing the specific hardships the applicant's spouse, the only qualifying relative, will experience were she to remain in the United States while the applicant resides abroad. 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 to the applicant's spouse if she relocated abroad to reside with the applicant, on motion the AAO found that no supporting documentation had been provided by counsel establishing the specific hardships the applicant's spouse would experience were she to relocate abroad. *Supra* at 5-6. On motion, the AAO finds that based on the death of the applicant's spouse's cousin and his wife due to gun violence in Nogales, Sonora, Mexico, the applicant's home state, as evidenced in an article provided with the instant motion; the role the applicant's spouse plays in her mother's care and well-being; the Travel Warning issued by the U.S. Department of State confirming that Sonora, Mexico, the applicant's birth state, is a key region in the international drug and human trafficking trades and can be extremely dangerous for travelers; and the applicant's spouse's birth, residence, family and community ties in the United States, the applicant has established that his U.S. citizen spouse would experience extreme hardship were she to relocate to Mexico to reside with the applicant due to his 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 Age*, 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 applicant's spouse 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 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.