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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: **JUN 27 2014** Office: ATLANTA, GA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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,

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

Ron Rosenberg
Chief, Administrative Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia. 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 purports to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for entering the United States using fraudulent papers.¹ The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director denied the applicant's Form I-485 adjustment application and Form I-601 waiver application in the same decision. The field office director found the applicant was not lawfully admitted to the United States and, therefore, concluded that the applicant was ineligible to file a waiver application. The field office director denied the waiver application accordingly. In addition, the field office director denied the applicant's adjustment application and stated that the decision may not be appealed.

Counsel appealed the denial of the waiver application, contending, among other things, that the field office director erred in not completing an analysis of extreme hardship and erred in determining that the decision could not be appealed. Counsel also contends the applicant established extreme hardship to her husband.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and her husband indicating they were married on August 9, 2012; a copy of the birth certificate of the couple's U.S. citizen daughter; affidavits from the applicant; an affidavit from the applicant's husband; numerous letters of support, including from the applicant's relatives and the couple's church; letters from the applicant's husband's employers; copies of tax returns and other financial documents; a psychological evaluation; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 Act is inadmissible.

¹ In addition, the applicant may be inadmissible under section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than 1 year and entering or attempting to enter the United States without being admitted. On her Form I-601 she indicated that she was unlawfully present in the United States and then attempted to reenter on three occasions. The specifics of this should be examined in any future proceedings.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the applicant states that she entered the United States in February 2007 using fraudulent documents. Specifically, the applicant states that she paid \$3,500 to cross the border from Tijuana and that she entered the United States in a car using fraudulent papers. Therefore, for purposes of this decision only, the applicant is taken at her word and is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 applicant’s husband states he has lived in the United States since 1995. According to his affidavit, he and his wife have a baby together and if his wife leaves the United States, she will probably take the baby with her because he would not have time to work and take care of the baby. Therefore, he states he would lose two family members. The applicant’s husband also states that his parents split their time between the United States and Mexico, that he lives with his brother and his brother’s family, and that his sister lives next door. He states he recently got a promotion and now works full-time earning a salary of \$50,000, and that his wife does not work. He contends he loves his wife very much and that he fears his depression will get worse if she returns to Mexico. He states he is anxious and feels a lot of pressure because he cannot do anything to help. Furthermore, the applicant’s husband states he cannot return to Mexico to be with his wife because he would not make enough money to support their family in Mexico. He contends his grandparents and another sister still live in Mexico, but that there is no work available near where his family lives, and that there is no hot water in the house. According to the applicant’s husband, the last time he visited Mexico in 2010, he did not feel safe and feared being robbed. He states he wants their child to grow up with all of the benefits of being a U.S. citizen.

After a careful review of all of the evidence, the record establishes that if the applicant’s husband returned to Mexico to avoid the hardship of separation, he would experience extreme hardship. The record shows that the applicant’s husband has lived in the United States for almost twenty years, since

he was twelve years old. The record also shows the applicant's husband is employed and letters of support in the record show he participates in community activities and attends church. In addition, the record shows the applicant's husband has been diagnosed with Major Depressive Disorder and Anxiety Disorder, and has been recommended for cognitive behavioral therapy. According to the psychologist, the applicant's husband's social anxiety symptoms started in approximately 2009 and his major depressive episode started in December 2011 when he found out his wife was pregnant. Furthermore, the U.S. Department of State has issued a Travel Warning for parts of Mexico, including Michoacan, where both the applicant and her husband were born. *U.S. Department of State, Travel Warning, Mexico*, dated January 9, 2014. Considering the unique factors of this case cumulatively, the record establishes that the hardship the applicant's husband would experience if he returned to Mexico to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, the applicant's husband has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he remains in the United States without his wife. Although we are sympathetic to the family's situation, nonetheless, if the applicant's husband decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the applicant's husband states that his wife would probably take their daughter to Mexico, aside from stating he would not have time to take care of the baby and work, he does not address with any specificity whether he would be able to care for their daughter or whether he would be able to get any help from his family, including his brother and sister-in-law with whom he lives, or his sister who lives next door. Even considering all of the factors in the case cumulatively, including the psychological evaluation, there is insufficient evidence showing that if the applicant's husband remains in the United States, the hardship he will experience amounts to extreme hardship. *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).

Extreme hardship warranting a waiver of inadmissibility can be found 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, the record does not establish that refusal of admission would result in extreme hardship to the applicant's husband, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Because the

applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

To the extent the field office director denied the applicant's Form I-485 adjustment application in the same decision, we have no appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. Therefore, we cannot undertake any analysis of the field office director's decision and the Form I-485 remains denied for the reasons stated in the denial.

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.