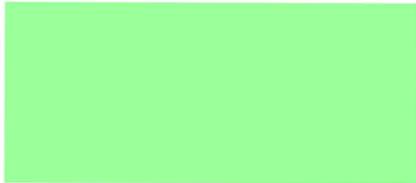


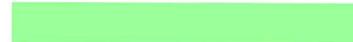


U.S. Citizenship
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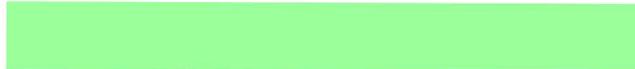
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DATE: **MAR 25 2014** Office: NEBRASKA SERVICE CENTER

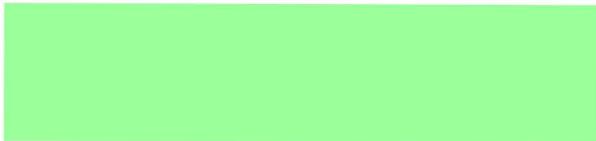


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), 212(d)(11) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(d)(11) and 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. An appeal of the denial 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 AAO decision will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of her departure from the United States. She was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States through fraud or material misrepresentation; and under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for knowingly assisting her minor child to enter the United States in violation of the law. The applicant has a lawful permanent resident spouse, two U.S. citizen children, and one child who is neither a lawful permanent resident nor a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v); section 212(i) of the Act, 8 U.S.C. § 1182(i); and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

The Director found that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Director*, dated January 24, 2013. The AAO found that the applicant's spouse would not experience extreme hardship whether he was separated from the applicant or he remained in the United States, and the AAO dismissed applicant's appeal. *AAO Decision*, dated October 2, 2013.

On motion, counsel asserts that the applicant has established extreme hardship to her spouse under relevant case law and that she warrants a favorable exercise of discretion. *Brief in Support of Motion*, dated November 1, 2013.

The record includes, but is not limited to, counsel's briefs, statements from the applicant and her spouse, statements of support from friends of the applicant and her spouse, financial records, their children's educational records, a psychological evaluation of the applicant's spouse and country-conditions information about Mexico. The entire record was reviewed and considered in rendering a decision on the motion.

The applicant has filed a motion to reconsider. A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Based on the reasons stated and reference to pertinent precedent decisions, including *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) and *Matter of O-J-O*, 21 I&N Dec. 381 (BIA 1996), the requirements of a motion to reconsideration have been met.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant entered the United States without inspection in December 2002 and remained in the United States until May 2011, accruing unlawful presence during that entire period. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. She does not contest this ground of inadmissibility.

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

- (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:

- (1) The [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.

The record reflects that the applicant sought to procure a visa to the United States in 2011 by misrepresenting the length of time that she had resided in the United States, initially stating that she had only been unlawfully present in the United States for one month. The applicant disclosed that she had been unlawfully present in the United States for a period of one year or more only after a consular officer confronted her with derogatory evidence. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through fraud or willful misrepresentation of a material fact. The applicant does not contest this inadmissibility finding.

Section 212(a)(6)(E) of the Act provides, in pertinent part, that:

- (i) In general-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

...

- (iii) Waiver authorized-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides, in pertinent part, that:

(11) The [Secretary] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that the applicant paid \$1,000 to smuggle her son into the United States in July 2009. As a result of the applicant's role in bringing her minor son into the United States unlawfully, she is inadmissible under section 212(a)(6)(E) of the Act. The applicant does not contest her inadmissibility.

A waiver under this section may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest. *Id.* The AAO, however, will first consider whether the applicant has met the criteria for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. If the applicant does not meet the more stringent criteria for those waivers, no purpose would be served in determining her eligibility for a waiver under section 212(d)(11).

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 U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under section 212(a)(9)(B)(v) of the Act. In this case, the applicant's qualifying relative is her spouse. Hardship to the applicant or her children is only relevant insofar as it is shown to affect the hardship to the qualifying relative, in this case the applicant's spouse. 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 deportation, 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, 885 (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 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.

The AAO will first address hardship to the applicant's spouse if he relocated to Mexico. The applicant's spouse states that he has lived in the United States since 1990; his elderly parents in Mexico would be unable to help him; he has no other close family members in Mexico; and he and the applicant do not have any possessions or property in Mexico.

Counsel and the applicant's spouse state that the applicant's spouse would suffer financially if he sold his two businesses and residential property and moved to Mexico. The record contains documentation showing the applicant owns a home and two businesses: a produce stand and a restaurant. The applicant's spouse explains that he would have to take a loss on their home if he sold it, as real estate prices have declined; there are fewer qualified buyers and loans are difficult to obtain; selling his businesses would be difficult, as their revenues have fallen, thus reducing their values; he would live in poverty and be dependent on the government for support in Mexico; and the job market is not strong there. The applicant states that she has been unable to find employment in Mexico; she and the applicant have no assets in Mexico; and they are unskilled laborers who would not be able to earn enough to support their family.

The applicant submits country-conditions information about Mexico, including information on healthcare, crime, safety, education and economic issues. Although the applicant cites information about crime and security issues generally in one of her statements, the July 12, 2013 U.S. Department of State Travel Warning for Mexico does not include an advisory for [REDACTED], where the applicant resides and presumably where her spouse would relocate.

The applicant and her spouse also state that their children would not be able to attend school at their current grade levels in Mexico, because their Spanish is limited and English-language private schools are very expensive. The applicant's spouse states that their children are having a hard time adjusting to life in Mexico and the quality of available schools is poor. The record includes letters from the applicant's children to their father, in which they state they miss him and miss living in the United States.

The record reflects that the applicant's spouse would experience emotional difficulty in Mexico due to his lengthy residence in the United States and the difficulty to their children. However, the record does

not include sufficient evidence to establish that the applicant's spouse would experience financial hardship or safety issues in [REDACTED]. In addition, he is originally from Mexico and has family ties there, including the applicant and his parents. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon relocation to Mexico.

The AAO will now address hardship to the applicant's spouse if he remains in the United States. Counsel states that the applicant's spouse is at risk of losing his businesses because he needs the applicant to assist him, and his businesses are affected by expenses incurred in traveling to visit the applicant and supporting their family financially in Mexico. The applicant's spouse states that the applicant managed his businesses and he has not been able to replace her after her departure. He also states that his businesses have been losing revenue. Moreover, the applicant's spouse claims that traveling to Mexico caused him to forget to renew the insurance for his businesses and that as a result they were without insurance for a few months in 2012. He states that the applicant managed matters like business insurance. The record includes business insurance cancellation notices. Additionally, the record includes evidence that the applicant's spouse financially supports the applicant, usually sending \$1,000 per month, and that he has traveled to Mexico several times. The applicant's spouse asserts that he would continue to experience financial hardships because he is unable to manage his businesses while also visiting his family in Mexico. The record includes evidence of the applicant's spouse's expenses, including car payments, county-tax bills, an overdue waste-management bill and other business-related expenses. The applicant also provides a list of monthly expenses to assert that her spouse cannot pay these expenses with his current income.

Furthermore, counsel asserts that the applicant's spouse's children, who reside in Mexico with the applicant, are suffering from extreme emotional hardship as a result of their separation from him. The record includes letters from the children to the applicant's spouse in which they tell him they miss him. The applicant's spouse states that he misses his children and he wants his family to be together. The applicant states her spouse has lost 24 pounds and has had difficulty sleeping and eating since they have been separated. The applicant's spouse reported headaches, poor appetite, difficulty concentrating and disturbed sleep to a psychologist who evaluated him in 2012. The psychologist states that according to the applicant's spouse, the applicant and he are very close and rely on each other for emotional support, personal stability and a sense of security. The psychologist also notes that he "could be devastated psychologically and emotionally if he were separated from [the applicant]" and is "already presenting emotional problems such as symptoms of depression, anxiety, and tension" related to the applicant's immigration issues. The applicant's spouse was diagnosed with depressive disorder and anxiety disorder and was advised to seek counseling.

The record reflects that the applicant's spouse, while separated from his two children and the applicant, is experiencing significant emotional and psychological hardship without them, with physical manifestations, and that this hardship is likely to intensify with time. His children also are experiencing hardship in Mexico, which causes additional emotional hardship to the applicant's spouse. In addition, a significant increase in his expenses reflects that he is experiencing financial hardship. Considering the hardship factors presented in the aggregate and the normal results of

separation, the AAO finds that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Although counsel presents evidence of favorable discretionary factors in her brief accompanying this motion, as the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion. In addition, no purpose would be served in determining her eligibility for a waiver under section 212(d)(11).

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 AAO decision is affirmed.