



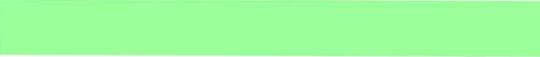
**U.S. Citizenship
and Immigration
Services**

(b)(6)



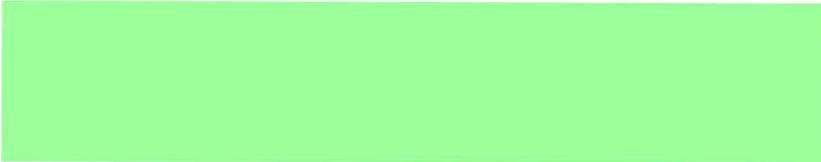
DATE: **MAR 26 2014** Office: NEBRASKA SERVICE CENTER



IN RE: A 

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife in the United States.

The director found that there is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and denied the application accordingly.

On appeal, counsel contends the applicant is not inadmissible pursuant to section 212(a)(6)(C)(ii) of the Act because he did not knowingly make a false claim to U.S. citizenship in order to obtain an immigration benefit or any other state or federal benefit.

The record contains, *inter alia*: a letter from the applicant; a statement from the applicant's wife, [REDACTED] copies of transcripts; a letter from [REDACTED] employer; letters of support; copies of tax records and other financial documents; a letter from [REDACTED] physician and copies of medical records; an article addressing violence in [REDACTED], Mexico; copies of photographs of the applicant and his wife; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

....

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

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

(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 Attorney General [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.

In this case, the record shows, and counsel concedes, that the applicant entered the United States without inspection in September 2001 and remained until his departure in May 2010. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year.

Regarding inadmissibility under section 212(a)(6)(C)(ii) of the Act for making a false claim to U.S. citizenship, the applicant concedes that he used the name and social security number of “Bryan Westcott” for employment purposes. A search of public records revealed that a U.S. Citizen with that name and social security number exists. However, the applicant attests in an affidavit that he does not know the person who sold him the social security number, and that he does not know who [REDACTED] is, whether he is dead or alive, or if he is a citizen, resident, or has work authorization.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent

objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds that the applicant has not met his burden of proving he is not inadmissible under section 212(a)(6)(C)(ii) of the Act. As of November 6, 1986, all employers are required to have new employees complete a Form I-9, identifying their citizenship or immigration status by checking one of four boxes: U.S. citizen, non-citizen national of the United States, lawful permanent resident, or alien authorized to work. In conjunction with the Form I-9, new employees must present documents to establish identity and employment authorization. In the instant case, the record does not contain a copy of the Form I-9 completed by the applicant. Similarly, there is no evidence in the record showing which documents the applicant submitted in order to establish his identity and employment authorization. According to the List of Acceptable Documents on Form I-9, a social security card alone is insufficient to establish both identity and employment authorization. Although it is possible, as counsel contends, that the consular officer assumed the applicant had claimed to be a U.S. citizen to obtain work, as counsel states in her brief, there is no official transcript of the visa interview. Therefore, the applicant has not submitted competent, independent, objective evidence pointing to where the truth lies. Accordingly, the applicant has not met his burden of proving he did not make a false claim to U.S. citizenship to obtain employment. There is no waiver available for inadmissibility under section 212(a)(6)(C)(ii) of the Act and the appeal must be dismissed.¹

Even if the AAO concluded that the applicant was not inadmissible under section 212(a)(6)(C)(ii) of the Act, the applicant remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and has not established extreme hardship to a qualifying relative, as explained below.

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.

¹ Even if USCIS determined that the applicant was not inadmissible under section 212(a)(6)(C)(ii) of the Act, as counsel states in her brief, the Department of State has exclusive and final authority to issue visas. Therefore, the Department of State could still deny the applicant’s visa.

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.

In this case, the applicant's wife, [REDACTED], contends she has been suffering financially and emotionally since her husband's departure from the United States. According to [REDACTED] she was married twice before she married the applicant and feels devastated being separated from him. She said they desperately want to have a child together which cannot happen until he returns to the United States. In addition, [REDACTED] asserts that the loss of her husband's income has been hard for her financially, particularly considering he has been unable to find a job in Mexico and she has

spent thousands of dollars visiting him. [REDACTED] also states that being separated from her husband has strained her family relationships. She states she has two brothers who live in the United States, but that her parents and her twin sister live in Panama. She states that she has not visited Panama for several years because of her travels to Mexico to see her husband. Furthermore, [REDACTED] contends that she would suffer extreme hardship if she relocated to Mexico to be with her husband. She states she has worked for the same travel corporation since August 1999 and that she would be unable to find employment in Mexico because she is forty-seven years old and is considered an outsider due to her Asian ethnicity. In addition, she states she has lived in Milwaukee, Wisconsin, for nearly twenty years, has a large network of friends there, and owns a duplex with one of her brothers. She also claims she would face extreme danger in Mexico due to crime, violence, and drug activity. She states she witnessed a stabbing in her husband's neighborhood during one of her visits and has seen gang members fighting with knives and broken bottles. According to [REDACTED] her husband's family lives in extreme poverty and do not have electricity, heating, or air conditioning in their house. Moreover, Ms. [REDACTED] states she needs access to good medical care and health insurance, particularly considering she had surgery for a torn meniscus in 2006 and was told she may develop arthritis.

After a careful review of all of the evidence, the record establishes that if the applicant's wife, Ms. [REDACTED], relocated to Mexico to avoid the hardship of separation, she would experience extreme hardship. The record shows [REDACTED] z has lived in the United States for the past twenty years, most of her adult life. A letter from her employer corroborates her claim that she has worked for the same company since August of 1999 and other documentation in the record shows she receives numerous benefits from her employment, including health, dental, and vision benefits, life insurance, and a retirement plan. Relocating to Mexico would entail leaving her job of over twelve years and all of its benefits. The record also includes documentation corroborating the claim that [REDACTED] owns a home with her brother. In addition, letters of support in the record show she is very active in her community and volunteers for several organizations. Furthermore, the applicant has submitted an article addressing violence in [REDACTED], Mexico, where the applicant is currently living. Although the U.S. Department of State's Travel Warning for Mexico has no travel advisory in effect for Guanajuato, *U.S. Department of State, Travel Warning, Mexico*, dated July 12, 2013, considering Ms. [REDACTED] personal experiences in [REDACTED] and the article in the record, [REDACTED] concerns regarding her safety are not unfounded or unreasonable. Considering the unique factors of this case cumulatively, the record establishes that the hardship Ms. [REDACTED] would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, Ms. [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she decides to remain in the United States without her husband. Although the AAO is sympathetic to the couple's situation, and understands the couple's desire to have children, nonetheless, if Ms. [REDACTED] 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. With respect to emotional hardship, the record does not show that Ms. [REDACTED] hardship would be extreme, unique, or atypical compared to others separated as a result of inadmissibility or exclusion. *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). Regarding financial hardship, the record shows that [REDACTED] has stable employment and supported herself for many years before she met the applicant in 2008. There is no evidence in the record showing how much income the applicant earned while working in the United States and there is no evidence Ms. [REDACTED] is in arrears in paying any of her bills. Although she may experience some financial hardship by traveling to see her husband in Mexico and helping to support him, even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if Ms. [REDACTED] remains in the United States, the hardship she will experience amounts to hardship that is unusual, unique, or atypical compared to others in similar circumstances.

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 wife, the only qualifying relative in this case.

A review of the documentation in the record shows that the applicant has no waiver available for his inadmissibility under section 212(a)(6)(C)(ii) of the Act and, in any event, that he failed to establish that the denial of his waiver application would cause extreme hardship to his wife. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he 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.