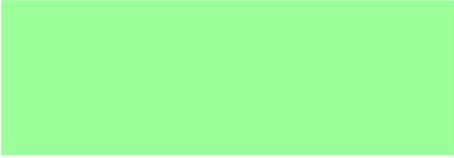


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 05 2014**

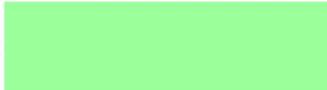
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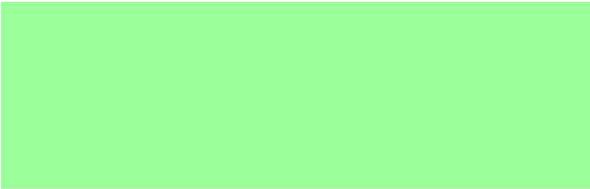
Applicant:



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 Appeals Office

DISCUSSION: The Field Office Director, Tucson, Arizona, 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)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship to her husband and two U.S. citizen children, particularly considering the couple's son has asthma and the applicant's husband suffers from depression.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on August 31, 1999; copies of the birth certificates of the couple's two U.S. citizen children; a statement from the applicant; a statement from Mr. [REDACTED] a statement from the couple's son, [REDACTED]; an Asthma Action Plan for [REDACTED]; a statement from Mr. [REDACTED]'s employer; copies of tax returns and other financial documents; letters of support, including from the couple's church; a psychological report; 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.

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 record shows, and counsel does not contest, that the applicant began residing in the United States in 1990 and subsequently applied for a B1/B2 Border Crossing Card claiming she resided in Mexico. The record further shows, and counsel does not contest, that during her residence in the United States, she occasionally traveled to Mexico and when she returned to the United States, she told immigration officers she was entering the country to shop. Therefore, the applicant 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.

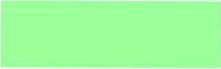
In this case, the applicant's husband, Mr. [REDACTED] states that he and his wife have two children together and that he cannot visualize his life without her. In addition, Mr. [REDACTED] contends that after his younger brother died from cancer, he fell into a depression which led to drug addiction. According to Mr. [REDACTED] his wife helped him overcome this terrible stage in his life and had him admitted into a rehabilitation center. He states that she was able to help him overcome his addiction because of her love, patience, and faith. Mr. [REDACTED] claims it would be very stressful and hard to be alone in the United States without his wife, particularly because she is in charge of caring for their children. Furthermore, Mr. [REDACTED] contends that if he relocates to Mexico, their family would be destroyed completely and all of the work they have done so their children could have a great future would be at risk. He also states he fears that there is a great deal of violence and poverty in Mexico.

After a careful review of all of the evidence, the record establishes that if the applicant's husband, Mr. [REDACTED] returned to Mexico, where he was born, to avoid the hardship of separation, he would experience extreme hardship. The record shows that the couple has two U.S. citizen children who are currently sixteen and twenty-two years old. According to a letter from the couple's sixteen-year old son, he was born and raised in Tucson, Arizona, and the record shows he has been diagnosed with asthma. Although children are not qualifying relatives for purposes of a waiver under section 212(i) of the Act, the AAO recognizes the hardship Mr. [REDACTED] would experience if he relocated to Mexico with his adolescent son, particularly considering his son has a medical issue and is completely integrated and assimilated into American culture and society. *Cf. Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). In addition, the record shows Mr. [REDACTED] has been a lawful permanent resident for over twenty years, his entire adult life, since December of 1990. Letters of support in the record show Mr. [REDACTED] is very involved in the community, and a letter from his church states he has attended church services regularly for over fifteen years. Furthermore, regarding Mr. [REDACTED]'s fear of violence in Mexico, the U.S. Department of State has issued a Travel Warning for parts of Mexico, including Nayarit, 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 Mr. [REDACTED] 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, Mr. [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's situation, nonetheless, if Mr. [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 and psychological hardship, the record contains a report from a psychologist describing Mr. [REDACTED]'s self-reported symptoms of sadness, pessimism, increased irritability, reduced appetite, and difficulties with sleep, making decisions, and concentration. The report does not establish that any symptoms or emotional issues Mr. [REDACTED] may be experiencing, or will experience, are beyond that normally experienced by others separated from a spouse. *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). In addition, the psychological report makes no mention of Mr. [REDACTED]'s purported past depression and, in fact, states that no one in the family has required any mental health treatment in the past. The report also explicitly states that the applicant does not suffer from alcohol or substance abuse problems, but fails to mention Mr. [REDACTED]'s purported past drug addiction. The fact that the report was based on a single consultation and omits significant events asserted by the applicant and her husband diminishes the report's value to a determination of extreme hardship. Regarding financial hardship, the record does not contain evidence addressing the family's regular, monthly expenses, such as rent or mortgage. In addition, according to the psychologist, the couple's twenty-two year old daughter has been awarded college scholarships and lives with her parents at home without paying rent. Although the AAO does not doubt that Mr. [REDACTED] would suffer some financial hardship, without more detailed information about the family's expenses, the AAO is unable to determine the extent of his hardship. To the extent the couple's son has asthma, there is no letter in plain language from any health care professional addressing the prognosis, treatment, or severity of his asthma. Therefore, the record fails to establish that Mr. [REDACTED] would be unable to care for son without his wife. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if Mr. [REDACTED] remains in the United States, the hardship he will experience amounts to extreme hardship.

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 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, 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.

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.