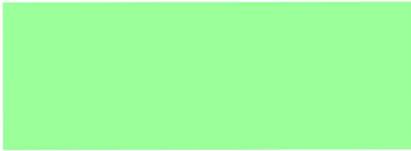




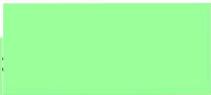
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 08 2014**

OFFICE: TUCSON FIELD OFFICE

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, Tucson, Arizona and 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 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 obtaining an immigration benefit through willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his U.S. citizen spouse.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated September 18, 2013.

On appeal, the applicant asserts that he provided substantial evidence of the extreme hardship his wife would suffer as a result of their separation and in the event she relocates to Mexico. He states he will present additional evidence within thirty days. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed October 18, 2013. The AAO has not received any additional evidence; therefore, the record is considered complete as of the date of this decision.

The record contains, but is not limited to: Form I-290B; various immigration forms and applications; a statement by the applicant's spouse; marriage, divorce and birth certificates; an employment verification letter for the applicant's spouse; medical, educational and financial documents; a 2010 article about minimum wages in Sonora, Mexico; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that the applicant entered the United States several times between 2003 and 2010 using a valid border crossing card. He remained in the United States with his wife and children longer than the permitted period. When asked by U.S. immigration officials at the border about the purpose of his entry, he stated he came to visit and shop. The applicant indicates that he intentionally misrepresented his purpose and length of stay in order to gain admission into the United States.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the

official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The applicant's misrepresentations about the purpose of his travel are material because they shut off a line of inquiry that may have resulted in denial of admission on the grounds that he resided in the United States and was thus an intending immigrant. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and the applicant does not contest this finding of inadmissibility.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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. I.N.S.*, 138 F.3d 1292 (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 applicant's spouse is a 27 year-old native of Mexico who became a naturalized citizen of the United States in 2011. She states that she needs the applicant, with whom she has been in a relationship for more than 11 years, for emotional and financial support. Without providing details she explains that they have overcome many struggles together. She indicates that the applicant's

financial and practical support in caring for their two young children allowed her to seek higher education, earn a master's degree, and progress in her employment. The applicant submits evidence of his spouse's tuition expenses, a transcript for her master's degree program, her bachelor's degree diploma, her employment letter as a personal banker with [REDACTED] and her insurance license as evidence of her educational and professional development.

While the applicant appears to have been supportive of his spouse's education and professional goals, the record does not contain other documents or details about how he assisted his spouse. For instance, the record does not include documents showing the applicant's income or his financial contribution to their household or her education costs. A budget delineating the family's income and expenses is included to show a monthly shortage of funds of approximately \$562. The record also includes the applicant's spouse's earning statement for two weeks in October 2012 of \$1703; her income in 2011 of \$36,933, according to her income-tax forms; bills for utilities from 2010 totaling approximately \$157; and vehicle insurance cards that do not indicate an amount for payment.

The monthly budget document is not accurately supported by the earnings statement, tax forms or bills, as the applicant's spouse's monthly income in 2012 would total approximately \$3400, while the two salaries listed on the monthly budget document amount to \$2700 per month. According to the applicant's spouse's 2012 earning statement, the family would have a monthly surplus of approximately \$138 instead of a deficit of \$562. The record lacks other income and expense documentation to verify the monthly budget. Without such evidence, including the applicant's financial contribution to the household, the AAO cannot assess the extent of the applicant's support. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse also states that she needs the applicant to continue to care for their two young girls, as she would not be able to handle her career, health and family responsibilities without him. The applicant's spouse, however, does not show if other family or friends have helped her or would be able to assist her in caring for the children. Moreover, the applicant's spouse does not explain how she managed their household without the applicant during their nine-month period of divorce.

Moreover, the applicant's spouse states that the applicant helped her with her health issues. A medical document from July 2012 shows that the applicant's spouse went to a hospital emergency room and received treatment for gallstones. The applicant submits no other medical evidence of ongoing treatment or statement about how he helped his spouse with her treatment and recovery.

The AAO has considered all assertions of separation-related hardship to the applicant's spouse, including the length of their relationship and the emotional strain of separation from the applicant. The record lacks evidence supporting the applicant's spouse's assertions that she needs the applicant for financial and emotional assistance, such as documents concerning his employment, his salary, her current income, and their expenses. The record also lacks information regarding family and community support for the applicant's spouse and her children and concerning ongoing medical conditions or psychological issues his spouse has or may have due to their potential separation.

Considered cumulatively, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse states she cannot relocate to Mexico because of the loss of employment opportunities and her investments in her education and career in the United States. The applicant submits an article about minimum wages in Sonora, Mexico and his spouse's tuition costs as evidence of their inability to cover these expenses if they were to relocate to Mexico. The applicant does not submit evidence concerning his spouse's or his own ability to gain employment in Mexico and assist the family with their financial obligations. There is also no indication of the potential expenses they may have in Mexico. The record does not indicate any other relocation-related hardship to the applicant's spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her length of residence in the United States, her financial obligations, and the investment in her career. Although the applicant's spouse likely would experience some difficulties in the event she were to relocate to Mexico, the evidence in the record is not sufficient to establish that the applicant's spouse would suffer hardship in the aggregate that would meet the extreme-hardship standard.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.