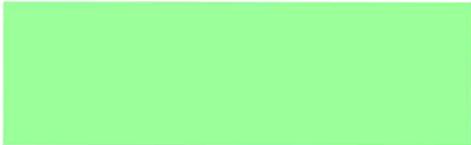




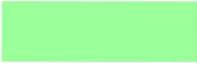
**U.S. Citizenship
and Immigration
Services**

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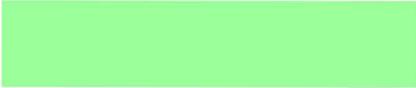


Date: **MAY 13 2014**

Office: LAS VEGAS, NV

FILE: 

IN RE:

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,

Ron Rosenber
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas, Nevada, 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 obtain an immigration benefit. 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 his wife 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, particularly considering his wife's mental health issues.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on August 7, 2010; an affidavit from Ms. [REDACTED] two psychological evaluations; copies of prescriptions; copies of tax returns, bills, and other financial documents; letters of support; 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 concedes, that on January 8, 1996, the applicant attempted to enter the United States using another person's border crossing card. The applicant was apprehended and deported on January 11, 1996. The record further shows, and counsel concedes,

that the applicant subsequently entered the United States without inspection on or about January 18, 1996. 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. Counsel does not contest this finding of inadmissibility on appeal.

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 wife, Ms. [REDACTED] states that she suffers from anxiety, depression, frequent headaches, and a sleep disorder for which she takes Xanax. According to Ms. [REDACTED] her parents passed away when she was young and she was raised by one of her sisters. She states that she does not have any children, but would like to have two children and is scared to raise her future children in Mexico. Ms. [REDACTED] states that her husband has a sixteen-year old son who lives in Indiana and that she helps support his son. She states her husband sees his son regularly when he visits during summer vacation and every other Christmas vacation. Additionally, Ms. [REDACTED] states her husband has worked as a cook for fourteen years, but recently lost his job when his work permit expired. Ms. [REDACTED] contends she has siblings in Mexico and California. According to Ms. [REDACTED] her husband's family is over eight hours away from her family in Mexico and she has never been to her husband's hometown. She states her sister-in-law was recently kidnapped in Mexico and her brother paid a ransom to get her back. In addition, she fears not having health insurance or quality medical care in Mexico.

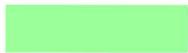
After a careful review of the entire record, there is insufficient evidence to show that the applicant's wife, Ms. [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. If Ms. [REDACTED] decides to stay in the United States, their situation is typical of individuals 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 and psychological hardship, the record contains an Initial Diagnostic Evaluation dated July 25, 2012, from a therapist as well as a Follow Up Diagnostic Evaluation dated November 14, 2013, from the same therapist. According to therapist, Ms. [REDACTED] was born and raised in Mexico until she was nineteen years old and completed the eleventh grade. At the same time, however, the therapist contends Ms. [REDACTED] holds substantial school loans and would have a difficult time finding employment in Mexico due to her limited ability to read, write, or speak Spanish. There is no evidence in the record corroborating the contention that Ms. [REDACTED] has any school loans and it is unclear why her Spanish language skills are limited if, as the therapist contends, she lived in Mexico until she was nineteen years old. In addition, in both evaluations, the therapist asserts that Ms. [REDACTED] "has no brothers and one sister," directly contradicting Ms. [REDACTED]'s statement in her affidavit, "I have 3 brothers and one sister in Mexico. I have 2 sisters and one brother in California." The fact that the evaluations were based on two interviews conducted more than a year apart, and make assertions that are either unsupported or contradicted by other documentation in the record, diminishes the evaluations' value to a determination of extreme hardship. In any event, the reports do not establish that any

symptoms or emotional issues Ms. [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). To the extent counsel contends Ms. [REDACTED] would be a single working mother and that the couple wants the best education possible for the applicant's son, as Ms. [REDACTED] states in her affidavit, the applicant's son does not live with them, there is no evidence in the record showing to what extent, if any, the applicant or his wife financially support his son, and according to the child custody agreement in the record, the applicant's son is currently eighteen years old. In addition, according to the most recent tax documents in the record, Ms. [REDACTED] earned \$30,078 in wages in 2010 and there is no evidence she is having difficulty paying, or is in arrears with paying, any of her bills.¹ 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 would be extreme, unique, or atypical compared to 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 upon deportation).

With respect to returning to Mexico to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. The record shows Ms. [REDACTED] was born in Mexico and has family members who continue to reside in Mexico. Therefore, the record establishes that Ms. [REDACTED] is familiar with the culture of Mexico and continues to have family ties there. There is no evidence showing she is currently under regular medical treatment in the United States or that she would be unable to obtain adequate medical care in Mexico as she claims. In addition, there is no evidence in the record suggesting she or her husband would be unable to find employment in Mexico. To the extent Ms. [REDACTED] claims her sister-in-law was recently kidnapped in Mexico, the applicant has not submitted any documents to corroborate this contention. Although the U.S. Department of State has issued a Travel Warning for some parts of Mexico, there is no advisory in effect for Guanajuato, where the applicant was born and where his family resides. In sum, the record does not show that Ms. [REDACTED]'s return to Mexico would be any more difficult than would normally be expected under the circumstances. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's wife would experience if she returned to Mexico amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

¹ Counsel contends the couple has a credit card balance of over \$2,300. Although the record contains a credit card bill for \$2,319, the bill does not identify the name of the account holder and, in any event, there is no indication the account holder has been late or delinquent with respect to paying the bill.



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.