



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **NOV 06 2014**

OFFICE: TUCSON

FILE: [Redacted]

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation or relocation. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated January 22, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer psychological, emotional and financial harm if the applicant's waiver application were denied.

In support of the waiver application and appeal, the applicant submitted identity documents, financial documentation, traffic violation records, lease documents, a psychological evaluation of the applicant's immediate family members, a letter from the applicant, a letter from the applicant's spouse, additional letters of support, and medical documents concerning the applicant's daughter. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 Attorney General (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 applicant indicated that she entered the United States in or about 2004 after being issued a border crossing card. The applicant resided in the United States and occasionally traveled to Mexico until her last entry, in or about October 2009. Upon seeking entries into the United States, the applicant did not reveal her residence in the United States, fearing the cancellation of her border crossing card and inability to gain admission. Instead, the applicant falsely indicated to immigration officers that she sought entry for the purpose of shopping or visitation. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

A waiver of inadmissibility under sections 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully 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. The applicant's spouse is the only qualifying relative in this case. 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-Morales*, 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 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 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 record reflects that the applicant is a 28-year-old native and citizen of Mexico. The applicant’s spouse is a 30-year-old native of Mexico and citizen of the United States. The applicant is currently residing with her spouse and children in [REDACTED] Arizona.

The applicant’s spouse asserts that he is the sole provider for his family and relies upon the applicant to care for their children while he is at work. The applicant’s spouse contends that he does not know any babysitters and that his daughter needs to be monitored carefully because she has been diagnosed with asthma. The applicant’s spouse further asserts that his children are attached to their mother and would be impacted by her departure.

The record contains a psychological evaluation stating that the applicant’s daughter has been diagnosed with a mild form of asthma for which she requires an inhaler. The record also contains medical documentation, most recently from April 16, 2013, confirming that the applicant’s daughter has been diagnosed with asthma and has been prescribed medication for use with an inhaler. There is no indication that the applicant’s daughter’s is currently unable to control her asthma with medication.

The psychological evaluation states that a separation from the applicant has a significant potential to cause serious emotional, occupational and social difficulties to the applicant's family members. The evaluation also indicates that professional counseling could help the applicant's spouse and children to achieve a more peaceful adjustment to concerns regarding the applicant's status in the United States. It is noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would experience will be considered only insofar as it affects the applicant's spouse.

The applicant's spouse states that he is employed in a seasonal position with the [REDACTED] as a fruit and vegetable inspector. The applicant contends that it would be difficult for her spouse to work and attend to the children before and after school, as he occasionally works long hours for his employer. Counsel for the applicant asserts that the applicant's spouse would face financial hardship if he had to maintain two households, including that of the applicant in Mexico, and would incur additional expenses for the care of his two children.

The record contains a letter of support stating that the applicant's spouse, as a seasonal employee, is laid off during the off-season and spends that time with the applicant and their children. The record also contains a financial accounting by the applicant indicating a household income of \$1876.32 and expenses of \$1433.00 on a monthly basis. The record is unclear as to the exact time period during which the applicant's spouse is employed in his seasonal position. However, there is no indication that the applicant's spouse would be unable to care for his children when he is not so employed. It is noted that the applicant's spouse's household income exceeds expenses on a monthly basis, and it has not been established that the applicant's spouse would be unable to seek a caretaker for his children during his employment, as needed. Further, there is no indication that the applicant would be unable to secure employment upon her return to Mexico and no information as to the extent to which her family members residing in Mexico could or would provide assistance. 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)).

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The psychological evaluation in the record indicates that the applicant's spouse's family ties are all in the United States. The applicant's spouse's parents, grandmother, aunts and uncles, nieces and nephews all reside in Arizona. The evaluation further indicates that the applicant's spouse has been employed in the same position for the past three years and believes that he would face serious difficulties obtaining a comparable position upon relocation to Mexico.

The psychological evaluation states that the applicant's spouse is concerned about the level of violence in Mexico and the lack of opportunities for his children. The applicant's spouse

submitted a Form I-130, Petition for Alien Relative, on behalf of the applicant, stating that he and the applicant were both born in [REDACTED] Mexico. The Department of State issued a travel warning for Mexico, dated, October 10, 2014, stating that [REDACTED] is a key region in the international drug and human trafficking trades and can be extremely dangerous, so that travelers are advised to limit travel to main roads during daylight hours. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Mexico.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 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, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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.