



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

(b)(6)

DATE: **NOV 06 2014**

Office: SAN FRANCISCO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality 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 waiver application was denied by the Field Office Director, San Francisco, California, 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 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 having procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and two children.

The field office director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 11, 2014.

On appeal, counsel for the applicant submits a brief. 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.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 . . .

Regarding the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation, the record establishes that the

applicant failed to disclose that he was married to his then lawful permanent resident spouse¹ who was residing in the United States when he applied for his Border Crossing Card on two separate occasions in March 2004. The applicant subsequently procured entry to the United States with the Border Crossing Card in May 2004. The applicant was thus found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a nonimmigrant visa and subsequent entry to the United States by fraud or willful misrepresentation. On appeal, the applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the two U.S. citizen children, born in 2004 and 2012, can be considered only insofar as it results in hardship to a qualifying relative. 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.

¹ The record establishes that the applicant's spouse is now a U.S. citizen. See *Certificate of Naturalization*, dated December 17, 2012.

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 v. I.N.S.*, 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.

With respect to establishing hardship were the applicant’s U.S. citizen spouse to remain in the United States while the applicant relocates abroad due to his inadmissibility, a declaration has been provided from the applicant’s spouse. In the declaration, the applicant’s spouse states that she and her husband have been together since they were both 17 years old and long-term separation from him would cause her hardship. She maintains that she is on edge and irritable and has been prescribed medications for her migraines and her insomnia. In addition, the applicant’s spouse details that her husband plays a key role in their children’s care, in light of her early work hours at [REDACTED] and without his daily presence and support, she will not be able to properly care for the children. The applicant’s spouse further asserts that her children will experience emotional hardship were they to be separated from the applicant, thereby causing her hardship. Finally, the applicant’s spouse contends that although she is gainfully employed, she needs her husband’s income to meet all their financial obligations.

We acknowledge the applicant’s spouse’s contention that she and the children will experience emotional hardship were they to remain in the United States while the applicant resides abroad, as asserted by the applicant’s spouse and [REDACTED] Psychotherapist, but the record does not establish the severity of these hardships or the effects on their daily lives. Further, the

applicant has not established that his spouse is unable to travel to Mexico, her native country, to visit him. As for the financial hardship referenced, the applicant has not established that he is unable to obtain gainful employment in Mexico that would permit him to assist his wife and children in the United States. Finally, the applicant's spouse references that her parents and sister live with her and the applicant. The applicant has not established that the applicant's spouse's family would be unable to assist her and the children as needed. 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)).

We recognize that the applicant's spouse will endure hardship as a result of a long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. We conclude that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility.

With respect to relocating abroad to reside with the applicant due to his inadmissibility, the applicant's spouse contends that she and the children will experience hardship. She first explains that going back to Mexico would mean leaving behind her parents, her sister and her husband's family and such a separation and disruption would cause her and her children extreme hardship. In addition, the applicant's spouse maintains that she does not have any family in Mexico that would be able to assist her and the children because her relatives in Mexico are of limited means working menial jobs. Finally, the applicant's spouse contends that she would be in a constant state of fear in Mexico as Jalisco, her husband's home state, is dangerous. She references killings and beheadings of Mexicans, most of them bystanders.

The record establishes that the applicant's spouse has been residing in the United States for over 17 years. She has extensive community and church ties. In addition, the record establishes that the applicant's spouse's parents and sister reside with her in the United States. Further, the record establishes that the applicant's spouse has been gainfully employed, since 2007, earning over \$20 an hour. Finally, the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, Jalisco, the applicant's home state, due to violence and criminal activity. *See Travel Warning-Mexico, U.S. Department of State*, dated August 15, 2014. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 Age*, 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 applicant's spouse in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. The application is denied.