



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **NOV 20 2014**

Office: HARLINGEN, TEXAS

FILE: [Redacted]

IN RE: Applicant:

[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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Mexico, 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had 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 (Form I-601) accordingly. *See Decision of the Field Office Director*, December 10, 2013.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) improperly assessed the evidence provided in support of the Form I-601 as the evidence shows that the hardship to the applicant's husband, considered in its entirety, goes beyond what is normally experienced by a qualifying relative, and that the positive factors in this matter outweigh the negative factors, warranting approval of the waiver on discretion.

The record includes, but is not limited to, the following documentation: briefs filed by attorneys for the applicant in support of Form I-290B, Notice of Appeal or Motion, and the Form I-601; statements by the applicant and the applicant's spouse; financial documentation; letters of reference; and country-conditions information on Mexico. 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:

- (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 indicates that the applicant was issued a Border Crossing Card (BCC) in January 2004. On February 22, 2006, the applicant attempted to enter the United States at the Hidalgo, Texas Port of Entry using her BCC, and stated that she was entering the United States to go shopping. The applicant was traveling with a U.S. citizen and her minor child. Upon further questioning by a U.S. Customs and Border Patrol officer, the applicant admitted that she lived with the U.S. citizen and took care of her two minor children and cleaned house. The applicant admitted that that she had been working in the United States for about three months without authorization and was paid \$130.00 per month. The U.S. citizen also admitted that the applicant was working for her. The applicant was subsequently removed from the United States pursuant

to section 235(b)(1) of the Act, which rendered her inadmissible under section 212(a)(9)(A) of the Act for a period of five years. After the five years elapsed, the applicant was issued a second BCC on April 19, 2012, and entered the United States in July 2012. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation due to her false statements when she attempted to enter the United States on February 22, 2006. The applicant does not contest this inadmissibility.

Section 212(i) of the Act provides, in pertinent part:

The Attorney General [now Secretary of the 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 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. 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 v. INS*, 138 F.3d 1292, 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.

Counsel contends that the applicant’s spouse will experience emotional hardships if he is separated from the applicant. The applicant submitted a statement from her spouse dated July 13, 2013 in support of her Form I-601. In the statement, the applicant’s spouse discusses how he met the applicant in Mexico and married her on July [REDACTED] and describes their relationship; however, the statement does not provide any information regarding the hardships that he may experience if the waiver application is not approved. While we acknowledge the claim that the applicant’s spouse will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on his daily life.

Counsel further contends that the applicant’s spouse will experience financial hardship if the applicant’s waiver application is not approved. In the brief submitted in support of the Form I-

601, counsel states that the applicant's spouse is the owner of a restaurant and struggles to make ends meet. The record includes financial documentation that indicates that the applicant's spouse is self-employed. The 2011 federal income tax return for the applicant's spouse indicates that he had a business income of \$10,655.00 from sales and construction services. While the record includes copies of business license documents and evidence of monthly expenses to the applicant's spouse, the evidence in the record is insufficient to conclude that he would be unable to meet his financial obligations in the applicant's absence.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record lacks sufficient evidence demonstrating that any difficulties to the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if the waiver application is denied and he is separated from the applicant.

Regarding hardship that the applicant's spouse may experience if he were to relocate to Mexico, the record indicates that the applicant's spouse was born in Mexico. While we recognize that the applicant's spouse came to the United States at a young age and is now a U.S. Citizen, he is familiar with the language and customs of Mexico.

Counsel contends that the applicant's spouse has health considerations and safety concerns if he were to relocate to Mexico, and the record includes country-conditions information for Mexico. The applicant's spouse submitted a statement to the record dated July 13, 2013, in which he states that he was a medical student studying in Mexico in 2006 at the time he met the applicant. The statement indicates that the applicant's spouse continued to reside in Mexico during his relationship with the applicant, up until the time that she received her second BCC in April 2012. There is no indication that the applicant's spouse had any safety concerns when he previously resided in Mexico.

Accordingly, we find the evidence insufficient to demonstrate that the applicant's qualifying relative spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant. Based on the evidence in the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, 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 he will face no greater hardship than the unfortunate but expected difficulties arising whenever a loved one is removed from the United States. Although we are not insensitive to the situation of the applicant's spouse, the record does not establish that the hardship he faces rises to the level of extreme, as contemplated by statute and case law. Moreover, as the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.