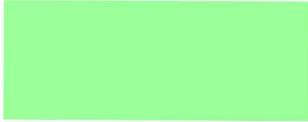




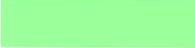
U.S. Citizenship
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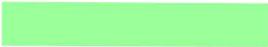
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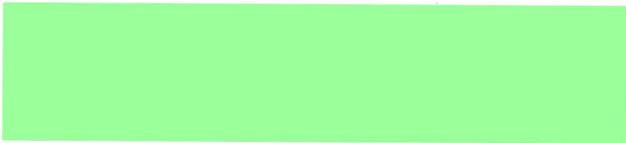
Office: TUCSON

FILE: 

IN RE: Applicant: 

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:



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. 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 procuring 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 and children.

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.¹ *See Decision of the Field Office Director*, December 18, 2013.

On appeal, counsel contends that the Field Office Director erred in finding that the applicant was inadmissible, and erred in concluding that the applicant's qualifying relative would not suffer extreme hardship if the applicant is not allowed to remain in the United States.

The record includes, but is not limited to, the following documentation: statement by applicant's counsel the Notice of Appeal or Motion, a letter from the applicant's attorney dated June 18, 2013 submitted with the applicant's Application to Register Permanent Residence or Adjust Status, statements by the applicant and the applicant's spouse, a psychological report for the applicant's spouse, financial documentation, a psychological report and school records for the applicant's daughter, and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.²

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.

¹ The record indicates that the applicant previously filed a Form I-601 on January 7, 2013. The Field Office Director, Tucson, Arizona, denied the initial Form I-601, finding that the applicant failed to establish that his removal would cause extreme hardship to a qualifying relative. *See Decision of the Field Office Director*, April 12, 2013. There is no indication in the record that the applicant appealed the denial of her first Form I-601.

² The Form I-290B, Notice of Appeal or Motion, indicated that counsel would submit a brief and/or additional evidence to the AAO within 30 days. However, no brief or additional evidence was received by the AAO, thus the record is considered complete.

The record indicates that the applicant was issued a Border Crossing Card (BCC) in January 2001 and traveled numerous times between Mexico and the United States, with her most recent entry to the United States on April 12, 2013. To receive a BCC, the law requires the alien to have a residence abroad that he or she does not intend to abandon. During an interview with a U.S. Citizenship and Immigration Services (USCIS) officer on November 27, 2012, the applicant testified that she has been living in the United States from January 2007 to the present. The applicant stated that when entering the United States, she would tell the immigration inspectors that she was coming to visit or to shop, even though she was residing in the United States at the time. We therefore concur with the Field Office Director's finding that the applicant made a willful misrepresentation in her responses to U.S. immigration officials in order to gain admission to the United States.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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.

The applicant's spouse states that he needs the applicant in the United States because she is the mother of his three children and she takes care of the children while he is working, and he

contends that the family will suffer psychologically and economically if the applicant's waiver application is denied.

The record includes a report from a psychologist in support of the contention that the applicant's spouse will experience psychological hardship if he is separated from the applicant. The report, dated May 13, 2013, concludes that separation from a loved one can cause a variety of psychological symptoms in varying degrees of emotional distress, and that a forced separation between the applicant and her spouse or a separation between the children and either parent has a significant potential to cause serious emotional, occupational, and social difficulties that would be detrimental to the psychological health and emotional well-being of the spouse and children of the applicant. Although we are sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record fails to establish that the emotional hardships that the applicant's spouse may experience are extreme 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 financial hardship, the record indicates that the applicant's spouse is employed with a manufacturing firm and earns \$8.50 per hour. A copy of the 2012 federal income tax return for the applicant's spouse indicates an adjusted gross income of \$17,825. The record further indicates that the applicant's spouse owns a home; however, there is no further evidence regarding the assets and liabilities or overall financial situation of the applicant's spouse. There is no evidence in the record to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence.

The record further includes a letter dated May 15, 2013 from a clinical assessor at a community clinic stating that the applicant's daughter has been diagnosed with adjustment disorder with mixed anxiety and depressed mood. As stated above, under 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered to be a factor if it affects whether a qualifying relative experiences extreme hardship. The applicant states her daughter is developing changes in her attitude and she gets mad easily, which is the reason that the family sought professional help for her. The applicant states that she and her spouse are very frustrated to see their daughter under stress. However, the record further indicates that the applicant's daughter is an honor roll student and gets good grades. A letter from the daughter's school dated April 25, 2013 states that she has a positive attitude about school, works well with others, and is well disciplined.

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 the impacts of separation on 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 and is familiar with the language and customs of that country. Both the applicant and the applicant's spouse indicate in their statements that they are concerned about the current violence in Mexico. However, the applicant failed to submit any evidence to the record to establish that her spouse would be in danger of violence at the location in Mexico where she would reside. 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)).

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.