



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 27 2014** Office: HOUSTON FIELD OFFICE 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 Field Office Director, Houston, Texas, 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 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 is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated November 26, 2013.

On appeal counsel for the applicant contends that the applicant has submitted documentation regarding the extreme hardship that her father will suffer if the applicant returns to Mexico. With the appeal counsel submits a brief. The record contains an affidavit from the applicant and her father; letters of support from the applicant's children, relatives, friends, and employers; medical documentation for the applicant's father; a psychosocial assessment of the applicant's father; financial documentation; and country information for 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.

Section 212(i) of the Act provides that:

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 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 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 record reflects and the applicant states on her waiver application that she attempted to enter the United States on September 13, 1992, by claiming to be a U.S. citizen and presenting a birth certificate in the name of another person. Based on this information the field office director found

the applicant inadmissible for fraud or misrepresentation. The applicant has not disputed the field office director's 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 lawful resident father 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).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's father is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's father.

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. *Salcido-Salcido v. INS*, 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.

On appeal counsel contends that the applicant has demonstrated extreme emotional and financial hardship to her father should she return to Mexico. A previously-submitted brief states that the applicant holds the family together. Counsel states that the applicant’s father is depressed, constantly worrying about the applicant relocating to Mexico and needing to support a household in the United States and one in Mexico. Counsel asserts that the applicant’s father has emotional distress, insomnia, trembling, and a decreased ability to concentrate. Counsel further states that the applicant’s father fears violence in Mexico, where he has lost two family members to crime, and fears that the applicant will be in danger there, and this plagues his emotional health.

The applicant’s father states that he needs the applicant with him and his grandchildren, especially the applicant’s daughter. He states that he does not know what will happen if the applicant cannot obtain a waiver, but that he does not want her to go to Mexico because one of his sons was killed there.

A psychosocial assessment of the applicant’s father states that he is in declining health and that the applicant is his primary source of support. It states that he has stress headaches and fatigue and worries obsessively about the family’s future and violence in Mexico. It states that the applicant’s father is preoccupied with health care issues and has been hospitalized for poor ambulation.

Counsel’s brief, statements from the applicant and her father, and the psychosocial report provided do not establish that the emotional hardships the applicant’s father would experience are beyond the hardships normally associated when a family member is found to be inadmissible. Although we are

sympathetic to the father's loss of a son and grandson in Mexico, the record does not contain any supporting documentation explaining the circumstances of their deaths to support a finding of extreme emotional hardship for the applicant's father if the applicant were to return to Mexico.

Counsel states that the applicant's father has diabetes and high blood pressure, takes many medications, and has been hospitalized due to poor ambulation. Counsel asserts that the applicant is her father's primary caregiver and that he depends on her to monitor his medications. The applicant states that her father needs her because he is ill, and the psychosocial assessment states that the applicant's father is overwhelmed about how he would manage if he had to face his medical issues without the emotional support of the applicant.

Documentation submitted to the record includes a pharmacy list of medications for the applicant's father and general medical information about diabetes. Absent an explanation from the treating physician of the exact nature and severity of the father's condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Nor is there any explanation why the applicant is primarily responsible for her father's medical needs as the record shows that the applicant has two grown children and a sister, and that her father currently has a wife. The record further reflects that the applicant resides in Houston, Texas, while her father lives in [REDACTED] Texas, which is more than 300 miles away. There is no explanation why, in the applicant's absence, her father would be unable to obtain assistance.

Counsel states that the applicant's father receives social security income but is unable to work due to declining health and that the applicant is the primary financial provider of the household. Financial documentation submitted to the record includes the father's social security payment information and some utility bills and credit card statements in the applicant's name. No documentation has been submitted, however, establishing the current expenses or overall financial situation of the applicant's father and his wife or the applicant's financial contribution to establish that without the applicant's physical presence in the United States, the applicant's father will experience financial hardship.

We find that the record fails to establish that the applicant's father will suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's father will endure some hardship as a result of long-term separation from the applicant. However, his situation if he 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.

Counsel asserts that relocating to Mexico would be unfair to the applicant's youngest daughter, who is in school, and that the applicant's father worries about her well-being in Mexico. Counsel states that the applicant's daughter is in middle school, a crucial time, and that the daughter states that the applicant does everything for her. Counsel further states that as the applicant's daughter does not read or write Spanish she would be at a disadvantage in school. Submitted to the record are articles pertaining to child social development and health. However, the record does not support that any hardship to the applicant's daughter would cause extreme hardship to the applicant's father.

Counsel also states that the applicant's father receives excellent healthcare in the United States, so it would be unfair to move him to an environment that could adversely affect his treatment. Counsel states that the applicant's father worries about the costs of health care in Mexico. The psychosocial assessment states that the applicant's father fears he would be unable to afford proper medical care in Mexico or have access to specialists to treat his multiple health issues. The assessment states that he has a routine and does not believe that he would be able to tolerate moving to Mexico. The assessment states that the applicant's father needs to remain in his home and continue his ongoing medical treatments. Submitted to the record are general accounts of health care in Mexico.

The applicant and her father state that he fears violence in Mexico. Submitted to the record are news accounts of crime in Mexico. Although the record does not indicate where the applicant would reside in Mexico, the record shows she was born in the state of Nuevo Leon, where the U.S. Department of State recommends deferring non-essential travel except in the metropolitan area of Monterrey. *See* Travel Warning - U.S. Department of State, dated August 15, 2014

We note that the record reflects that the applicant's father is now 80 years old and has been a lawful permanent resident since 1990. Thus, we find that the cumulative effect of the father's age and his length of residence in United States, as well as having to leave extended family members in the United States while being concerned about health care and violence in Mexico, establishes that he would experience extreme hardship if he were to relocate to Mexico to reside with the applicant.

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 in 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.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.