

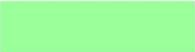


U.S. Citizenship
and Immigration
Services

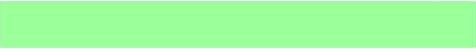
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Date: **SEP 09 2014** Office: HARLINGEN, TX

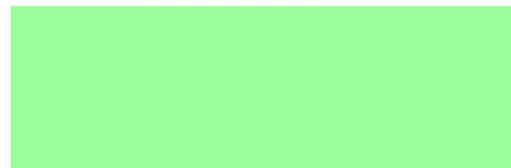
FILE: 

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, Harlingen, 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 a citizen of Mexico who misrepresented her marital status in order to obtain a visitor's visa to enter the United States. 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). She is the spouse of a U.S. citizen and has one child. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 11, 2011.

On appeal, counsel for the applicant asserts the applicant's waiver should be granted because her U.S. citizen husband will experience extreme hardship if it is not.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant and his mother; tax returns for the applicant; background materials on Mexico; background materials on the drug war violence; a psychological evaluation of the applicant's spouse; copies of pharmacy receipts; and photographs of the applicant and his spouse.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant misrepresented her marital status in order to obtain a visitor's visa to enter the United States. As this misrepresentation would have a tendency to influence the decision of the consular officer, it is a material fact and the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General,⁴ 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 or, in the case of a

VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 at 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 entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel asserts that the applicant's spouse was born in the United States and would suffer extreme hardship upon relocation. Counsel explains that the applicant's spouse suffers from two herniated discs which might require corrective surgery, and that he would not be able to receive treatment or medication in Mexico. Counsel also asserts that the applicant's spouse has been diagnosed with depression and anxiety and that relocating to Mexico would worsen his condition because he would have to separate from his elderly mother with whom he resides in the United States. Counsel states that the applicant's mother suffers from several medical conditions and that the applicant's spouse takes care of her. In addition, counsel asserts that the applicant's spouse would be at risk in Mexico due to the violent conditions in the area where the applicant is from.

The record does not contain any medical records corroborating that the applicant's spouse suffered a work-related injury or that he might need possible surgery. As evidence of the assertion counsel cited to a psychiatric examination, however the psychiatric examination does not explain how it determined that the applicant's spouse had a back problem, other than the condition was reported by the applicant's spouse. The record also does not contain sufficient evidence that the applicant's spouse's mother suffers from the medical conditions listed in her letter.

The record does contain a psychiatric evaluation of the applicant's spouse. The report states that the applicant's spouse is experiencing trouble sleeping and trouble concentrating. The report concludes that the applicant's spouse is suffering from Depressive Disorder and has severe psychosocial pressures.

The applicant's spouse's mother has submitted a letter stating that she resides with her son, and that he takes care of her. She states that she has several medical conditions and that the applicant assists in taking care of her. There is no documentation in the record to corroborate her claims. There is also no evidence in the record regarding the financial situation of the applicant's spouse's mother, and thus it cannot be determined what level of financial support the applicant's spouse is providing to her. Nonetheless, based on this evidence the record supports that the applicant's spouse would

have to sever the ties with his mother in order to relocate to Mexico, resulting in additional emotional hardship.

The record contains country conditions materials on Mexico, including a report and Travel Warning from the United States Department of State. There are numerous other background articles which discuss the violence in Mexico's border regions, including killings, corruption, kidnappings and random violence. The record indicates that the applicant's spouse is from the state of Nuevo Leon, an area in Mexico which has been impacted by the drug war violence, but a recent travel warning indicates the conditions there are improving. The Department of State Travel Warning: Mexico, dated August 15, 2014, states in its section on Nuevo Leon: "Although the level of organized crime-related violence and general insecurity in Monterrey has decreased dramatically within the last 18 months, sporadic incidents of violence have occurred in the greater Monterrey area. Security services in and around Monterrey are robust and have proven responsive and effective in combating violent crimes; however, instances of violence remain a concern in the more remote regions of the state." There is sufficient evidence in the record to establish that the the applicant's spouse will experience physical and emotional hardship upon relocation to Mexico due to the conditions in the area where they would reside.

The record is not clear with regard to the applicant's spouse's back injury and work history, one of the primary hardships asserted by the applicant. As noted above, the record contains no documents which support the applicant's spouse's claim of a back injury. The record, therefore, fails to establish what, if any, medical treatment he requires or whether such treatment is available in Mexico.

The record contains sufficient evidence to corroborate the applicant's assertions with regard to the psychological hardship her spouse is experiencing, the family ties he would have to sever upon relocation and the violent conditions in Mexico. In addition, the record indicates that the applicant's spouse was born and raised in the United States and there are no apparent family or community ties in Mexico. When these hardship factors are considered in the aggregate they rise to the level of extreme hardship.

With regard to hardship upon separation, counsel for the applicant asserts the applicant's spouse would experience psychological and financial hardship if the applicant were removed.

As noted above the record contains a psychiatric evaluation of the applicant's spouse. The report discusses the applicant's spouse's background and the symptoms of depression and anxiety being experienced. The report concludes that he is experiencing depression and severe psychosocial stressors. The report also indicates that his condition would likely worsen if he was separated from the applicant.

Counsel for the applicant asserts that the applicant's spouse would experience financial hardship if the applicant were removed. He states that the applicant currently works at the risk of suffering re-injuring his back and that he would not be able to financially support his mother and household in the United States and a second household with his spouse and step-daughter in Mexico. As noted above, however, there is insufficient evidence in the record to establish that the applicant's spouse

suffered any work injury and is unable to maintain employment to support himself and his mother. There are also no current tax records for the applicant's spouse so it is difficult to establish what his income is and whether or not he is able to meet his current financial obligations. The applicant's spouse asserts that he is currently working, but does not provide any documentation related to his annual income or any current financial obligations.

Counsel explains that the applicant's spouse would experience additional emotional stress exacerbating his psychiatric condition if he had to worry about the applicant and his daughter relocating to such a dangerous area in Mexico. However, as noted above, the most recent travel warning indicates that the conditions in Nuevo Leon have improved.

While the record establishes that the applicant would experience emotional hardship if he were separated from the applicant, that in itself is insufficient to establish that, even when considered in the aggregate, the hardships to the applicant's spouse upon separation would rise to the level of extreme

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(s) in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.