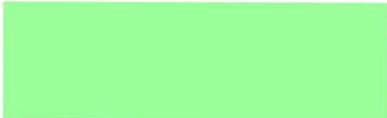




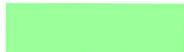
U.S. Citizenship  
and Immigration  
Services

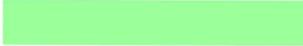
(b)(6)



Date: **SEP 17 2014**

Office: TUCSON 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:

SELF-REPRESENTED

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, Tucson, Arizona, 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.<sup>1</sup>

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 December 30, 2013.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that her spouse needs her to help care for their children, particularly a daughter with a medical condition. With the appeal the applicant submits a statement, statements from her spouse and their children, a psychiatric evaluation of her spouse, and country information for Mexico. The record contains a letter from the applicant's doctor and financial documentation and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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

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<sup>1</sup> Although the field office director found the applicant inadmissible for fraud or misrepresentation the decision states that the applicant's waiver application would be adjudicated under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) for unlawful presence as the applicant had indicated on Form I-601 that she is subject to a bar to inadmissibility because she had been previously unlawfully present in the United States. However, the record does not reflect a finding of unlawful presence.

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 that at an interview for her application to adjust status the applicant stated that in 2001 she obtained a B1/B2 Border Crossing Card by stating that she was living in Mexico when in fact she had been residing in the United States since 1996. The record reflects that the applicant further stated that she occasionally traveled to Mexico and then reentered the United States by stating to U.S. Customs and Border Patrol officers that she intended to shop when in fact she was returning to her residence. Based on this information the field office director found the applicant inadmissible for fraud or misrepresentation. The applicant has not contested the 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 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-Moralez*, 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. *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.

In their statements the applicant and her spouse each write that the applicant cares for the family home and the children as the spouse works, sometimes out of the area. They state that a daughter has abdominal epilepsy and needs the applicant to pick her up from school or work if she faints because the spouse is working and unable to do so. The applicant states that she and her spouse need to be together for the children’s education and future, and she states that her spouse has a lot of stress because he does not know what will happen to the applicant. Letters from the applicant’s children state how important she is to them.

A psychological evaluation of the applicant’s spouse states that the applicant provides home-related duties while the spouse works away from home and that he needs the applicant’s emotional support. It states that the applicant watches over finances and is responsible for the children’s transportation, especially if their daughter has an epileptic attack. The evaluation states that the spouse is likely to experience depression and anxiety resulting from separation from the applicant as he reports being extremely happy in his marriage and being reunited with his children. The evaluation states that separation could cause severe emotional, occupational, and social difficulties for the spouse.

We find that the record fails to establish that the applicant’s spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant and spouse state that the applicant cares for the children, but failed to provide any detail explaining the exact nature of any emotional hardships that the spouse would experience due to separation from the applicant or how such

emotional hardships are outside the ordinary consequences of removal. The psychological evaluation provided also does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. The applicant and her spouse reference their daughter with abdominal epilepsy, but the record contains no medical documentation explaining the severity of the daughter's medical condition or how it would cause extreme hardship to the applicant's spouse without the applicant's presence in the United States. We note that the record reflects that the applicant and her spouse, following the birth of their third child, separated in about 1996, with the spouse having two subsequent marriages of several years duration, until he and the applicant married in 2012 following the spouse's second divorce. Thus, from the record it appears that the applicant and her spouse had been living separately for nearly 16 years.

The applicant states that she needs to work to help her spouse with house payments. The psychological evaluation states that the spouse worries about expenses in the United States while paying for the applicant if she were living in Mexico and that the spouse has additional debt with medical bills for their daughter, children's tuition, and auto payments creating a financial strain. However, no documentation has been submitted establishing the spouse's current expenses, assets, and liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. It has also not been established that the applicant would be unable to support herself while in Mexico, thereby ameliorating the hardships referenced in the psychological evaluation with respect to having to maintain two households.

We recognize that the applicant's spouse 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

The applicant states that Mexico is dangerous, she does not want to expose her family to life there, and there are no job opportunities. The psychological evaluation states that the applicant's spouse is concerned about living in Mexico because of the difficulty obtaining comparable work and wages and that the economic situation in Mexico will impact his ability to secure housing and medical health coverage. It also states that the applicant's spouse fears crime in Mexico and that he worries about losing family and community in the United States where his parents and extended family live.

We find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. The spouse fears crime and the ability to find comparable employment. The applicant submitted Spanish-language news accounts of crime, but the record does not contain sufficient country condition evidence to establish that the spouse's safety and economic concerns regarding relocation to Mexico would rise to the level of extreme hardship. It has also not been established that the spouse would be unable to visit his family in the United States after relocating to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to her spouse as required under section 212(i) of the Act. 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.