



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 19 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application for a waiver of inadmissibility. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or material misrepresentation. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. lawful permanent resident spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

The Director concluded that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Director*, dated November 13, 2014.

On appeal the applicant, through counsel, states that her spouse will suffer extreme hardship as a result of their separation if she is not granted a waiver of inadmissibility. *Applicant's brief accompanying Form I-290B, Notice of Appeal or Motion*, filed December 11, 2014.

The record includes, but is not limited to: biographical information for the applicant, his spouse, and their two U.S. citizen children; a letter from a psychologist concerning the applicant's spouse; medical records for the applicant's son; photographs; letters from family and friends of the applicant and her husband; and newspaper articles in Spanish. Because the applicant does not submit translations for these articles, they could not be considered as evidence. According to 8 C.F.R. § 103.2(b)(3), "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The remaining record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part that:

(B) Aliens Unlawfully Present.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

Section 212(a)(6)(C) states:

- (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, which provides a waiver for fraud and material misrepresentation, states that:

- (1) The [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.

The record indicates that the applicant was last admitted to the United States as a nonimmigrant visitor using her Border Crossing Card (BCC) in April 2010 with permission to remain temporarily in the United States; however, the applicant remained unlawfully in the United States until August 31, 2013. On September 4, 2013, at her interview for an immigrant visa at the U.S. Consulate in [REDACTED] the applicant stated under oath that she told the U.S. border officer in 2010 that she was visiting when in fact she intended to remain in the United States permanently. As a result, the applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for a year or more of unlawful presence, as well as section 212(a)(6)(C)(i) of the Act, for procuring admission to the United States through fraud or material misrepresentation. She is inadmissible under section 212(a)(9)(B)(i)(II) for a period of ten years since her last departure. Her inadmissibility under section 212(a)(6)(C)(i) is a permanent ground of inadmissibility. The applicant does not contest her inadmissibility on appeal, and we will not disturb those findings.

The applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act, the standard for which is the same. Under both provisions of the Act, the applicant's only qualifying relative is her U.S. lawful permanent resident spouse. In order to qualify for this waiver, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. The applicant's U.S. citizen children are not qualifying relatives under the Act. Hardship to the applicant and the applicant's children will not be separately considered, except as it is shown to affect the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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 deportation, 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, 885 (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 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 the applicant, through counsel, states that her young U.S. citizen daughter will begin school in [REDACTED] Texas, in August 2015 and she will therefore reside with the applicant’s spouse full-time in the United States, causing her undue hardship as a result from separation from her mother, the applicant. The applicant’s spouse also states that their [REDACTED] year-old U.S. citizen son was in the hospital due to depression caused by his separation from the applicant.

As stated above, the applicant’s children are not qualifying relatives under the Act, and any hardship to them can only be considered insofar as it causes hardship to her qualifying relative, the applicant’s spouse. Moreover, the applicant submits no evidence to corroborate these assertions. Specifically, the record lacks evidence of her daughter’s actual and anticipated residence and registration for school in [REDACTED] or the effect that this change will have on her and her father, the qualifying relative. In addition, no documentation in the record shows that the applicant’s son was hospitalized due to depression or that his depression was due to separation from the applicant. The applicant has not shown how her husband’s hardship is affected by their son’s health. A medical center discharge summary dated November 2, 2013, indicates that the applicant’s son sought treatment for severe abdominal pain and received prescription for medications. Although the applicant’s assertions have been taken into consideration, insofar as they affect the hardship to her qualifying relative, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)).

Concerning hardship her qualifying relative would experience because of separation from the applicant, the record reflects that the applicant and her U.S. lawful permanent resident spouse have been married for more than 25 years. The applicant, through counsel, states that her husband is an electrician and must support two households with his limited income. The applicant submits no documentary evidence of her spouse's employment, income, expenses, or difficulty meeting financial obligations. Moreover, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503,506 (BIA 1980). As a result it is not possible to determine the degree of financial hardship the applicant's spouse is experiencing as a result of their separation.

The applicant's husband also states that he fears for the applicant and their daughter's safety in [REDACTED] Mexico, given the violence in that city, and being separated from the applicant has caused him and their children a great deal of stress. He states that it is hard for him to see his children suffer and that he has headaches and trouble eating and sleeping. The record contains a letter dated November 8, 2013, from a psychologist in [REDACTED] Mexico, stating that she evaluated the applicant's spouse and found that he was experiencing feelings of isolation, insecurity, and stress, "possibly" due to the estrangement that he faces from the applicant. The evaluator suggests continuing therapy but also states that the applicant's spouse was unavailable due to being out of town for work. In addition, in numerous letters the applicant's family and friends attest to the applicant's close relationship with her husband and ask that the family be reunited.

Although the applicant's spouse's emotional and psychological response to being separated from her is understandable and relevant to evaluating his hardship, the record lacks documentation to support that this hardship, in addition to his financial hardship, would amount to extreme hardship. We recognize the serious impact of separation on families in similar circumstances, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship is beyond that which is normally experienced by families faced with a loved one's removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant does not assert hardship to her spouse, a native and citizen of Mexico, if he were to relocate to Mexico. Although the record contains documentation of the applicant's spouse's family ties to the United States, the applicant submits no documentation of his other ties to the United States, such as property or employment. She also does not indicate whether the applicant's spouse could relocate to Mexico and maintain such ties. Moreover, the U.S. Department of State has issued a travel warning concerning Mexico, last updated on May 5, 2015, that indicates the dangers in [REDACTED] Mexico are serious; however, it also notes that no advisories are in effect in other parts of Mexico. The applicant does not address whether relocation to a different area of Mexico is possible and the hardship her spouse could experience there. The applicant bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.



In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's U.S. lawful permanent resident spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to a qualifying relative, as required under sections 212(a)(9)(B)(v) and 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 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