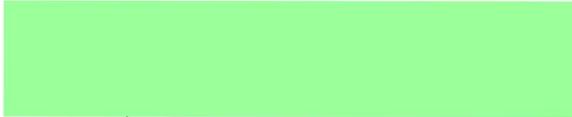




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 21 2015** OFFICE: FRESNO

File:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(d)(11) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(d)(11) and 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, Fresno, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who 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), for having procured admission to the United States through willful misrepresentation. Reviewing the record on appeal, we find it reflects the applicant also is inadmissible pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly aided another alien to enter the United States in violation of the law. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to sections 212(d)(11) and 212(i) of the Act, 8 U.S.C. §§ 1182(d)(11) and 1182(i) to reside with her U.S. citizen spouse,¹ children, and father as well as her lawful permanent resident mother in the United States.

The Field Office Director determined the applicant had not established extreme hardship to a qualifying relative, her U.S. citizen spouse, if she were not allowed to remain in the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 27, 2014.

On appeal, counsel asserts U.S. Citizenship and Immigration Services (USCIS) erred by improperly applying the legal standard in evaluating extreme hardship and failing to consider evidence of extreme hardship to the applicant's other qualifying relatives, her parents, in addition to her spouse's hardship. Counsel also asserts USCIS did not properly consider the hardship evidence in the aggregate, including proof of family ties in the United States and country-conditions in the applicant's home state in Mexico. *See Form I-290B, Notice of Appeal or Motion; see also Brief in Support of the Appeal*, dated July 28, 2014.

The record includes, but is not limited to: briefs; correspondence; affidavits by the applicant and her parents; documents concerning identity and relationships; employment and financial documents; photographs; and documents on conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(6) of the Act provides, in relevant part:

(E) Smugglers.-

(i) In General.- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

¹ The Field Office Director's decision erroneously identifies the applicant's spouse as a lawful permanent resident. The record reflects the applicant's spouse has been a U.S. citizen since November [REDACTED]

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides:

The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that around 2005, the applicant paid \$1,000 to an unidentified individual to bring her daughter into the United States without proper authorization by U.S. officials. The record also reflects the applicant's daughter subsequently entered the United States unlawfully. Although the applicant refers to these facts in her Form I-601, the Field Office Director did not address the matter in his decision. Based on the foregoing, we find the applicant is inadmissible pursuant to section 212(a)(6)(E)(i) of the Act, for knowingly aiding her daughter to enter the United States in violation of the law. However, the record shows that the smuggled alien was the applicant's own child. We therefore will exercise favorable discretion for purposes of family unity and find the applicant eligible for a waiver under section 212(d)(11) of the Act.

Section 212(a)(6) of the Act also provides, in relevant part:

(C) Misrepresentation.-

(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 Act is inadmissible.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

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

(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 reflects the applicant initially entered the United States around June 6, 2005. The record also reflects U.S. immigration officials subsequently apprehended the applicant in a vehicle occupied by three other individuals, and during secondary inspection, she admitted that she did not have proper documentation to be in the United States. The applicant was permitted to voluntarily return to Mexico around June 7, 2005. The record further reflects the applicant obtained a lawful permanent resident card that did not belong to her upon returning to Mexico. The applicant presented the lawful permanent resident card to a U.S. immigration official and was admitted to the United States later in June 2005, and she has remained here to date. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act. The applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is a qualifying relative in this case. The record reflects that the applicant's U.S. citizen father and lawful permanent resident mother also are qualifying relatives in this case, although hardship to them was not considered in the Field Office Director's decision. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 *Id.* at 568; *In re Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. at 246-47; *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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

In her brief submitted in support of the appeal, counsel indicates USCIS failed to give predominant weight to the effect that family separation would have on the applicant’s spouse and parents, quoting *Salcido-Salcido v. INS*, which states, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (citations omitted). We acknowledge that the present case arises within the jurisdiction of the Ninth Circuit, and due consideration is given to family separation in the present matter.

The applicant indicates in her affidavit dated October 18, 2013, that her spouse, whom she has been with for over 10 years, is nervous about her immigration matters and the possibility that they may be separated because: he and their daughter would remain in the United States, whereas the applicant and their son would return to Mexico; he would worry about their personal safety, given the violence occurring in her hometown and in Michoacán; they would only see each other three times each year due to travel costs and the spouse’s inability to take time off from work; they depend on his income; he would have to send the applicant money to cover her monthly expenses in Mexico, amounting to at least \$500 for food, clothing, and basic necessities; this would affect his ability to pay for utilities and his half

of the \$780 monthly rent they share with her parents, jeopardizing their ability to remain in their home; he “would feel terrible” if he and her parents had to move, as they would have difficulties finding affordable housing; it would be difficult for him to care for their daughter; he would need to pay someone to take her to and from school given his work schedule; and she would be unable to contribute to the maintenance of their households, as there is no work in her hometown, whereas she has found seasonal agricultural employment in the United States.

As evidence of her spouse’s emotional hardship, the applicant submits Internet articles and a copy of a newspaper article that discuss the recent and ongoing criminal and drug-related violence as well as the governmental corruption in the applicant’s home state, [REDACTED]. The applicant also submits evidence of her spouse’s financial circumstances, including a tax return for 2013 showing the applicant’s family’s adjusted gross income was \$44,096; monthly billing statements for utilities, amounting to about \$290; a receipt for rent in the amount of \$780; and a self-reported expense sheet, listing monthly expenses amounting to \$2,085 and a monthly income of \$4,000.

The record is sufficient to establish social conditions in [REDACTED] the applicant’s home state; however, the record does not include evidence of the applicant’s spouse’s current mental health and any related conditions. 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)). As the record does not contain details concerning the severity of the applicant’s spouse’s emotional hardship or any treatment or assistance provided, it is not possible to evaluate the nature of hardships related to his mental health and emotional wellbeing.

The record also contains evidence of some of the applicant’s spouse’s financial obligations; however, it does not demonstrate his inability, as the family’s primary breadwinner, to meet those obligations in the applicant’s absence. Further, the record lacks sufficient evidence of expenses that the applicant would incur in Mexico, and it also lacks evidence of labor or employment conditions in Mexico to address her own ability to assist her spouse in maintaining their households. As stated previously, 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. at 165. Without further information, we are not in a position to reach a different conclusion concerning the severity of any hardships that may be related to the applicant’s spouse’s financial circumstances.

Though the record is sufficient to establish the applicant’s spouse may experience a degree of hardship in the applicant’s absence, the evidence, considered in the aggregate, does not establish the applicant’s spouse would suffer extreme hardship as a result of separation from the applicant.

Concerning the hardship they would experience upon separation from the applicant, the applicant’s parents state in an affidavit dated July 22, 2014, that the applicant’s father came to the United States in the 1980s to work in the fields in California, and in so doing, he “missed many important occasions,” as he left his wife and children in Mexico. They also indicate in their affidavit that the applicant’s father has reunited with his wife and younger children, including the applicant, and he wants to keep his family together. The applicant’s parents further state that: they have lived in the applicant’s household with their three sons, son-in-law, and grandchildren; they would miss the applicant and their grandchildren, to

whom the applicant's mother is "especially attached"; they are closest to the applicant and rely on her more than on their other children; they would feel less secure living apart from the applicant and her spouse; they suffer from various medical conditions, including diabetes and high blood pressure, and because they do not have medical insurance they have to rely on their family for support; they share the rent with the applicant's spouse, who also pays the utilities; the applicant's father is the primary breadwinner for his sons and wife, working in the fields six days each week, earning a weekly salary of about \$350; the applicant's mother works seasonally about six months each year, earning between \$200 and \$500 each week; they could lose their house because they make just enough money to support themselves and "get by" so they do not have any extra money; and their eldest son would assist them financially, but he cannot because he does not have steady agricultural work.

As evidence of her parent's financial hardship, the applicant submits a tax return for 2013, showing their adjusted gross income was \$28,056; billing statements for auto insurance and orthodontics treatment, totaling about \$1,986; a 2014 bank account statement; a self-reported expense sheet, listing monthly expenses amounting to \$2,004 and a monthly income of \$2,100; and Internet printouts regarding the cost and availability of rental properties in [REDACTED] California. The applicant also includes earnings statements, indicating her father's hourly wage of \$9.50, and her mother's hourly wage of \$9.25.

The record establishes that the applicant shares a household with her parents, and it contains some evidence of her parents' financial obligations. However, it does not demonstrate their inability to meet those obligations in the applicant's absence. Moreover, the record does not include evidence corroborating claims about their physical and mental health and any related conditions. As stated previously, 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. at 165. As the record does not contain further details concerning the severity of the applicant's parents' physical and mental health conditions or any treatment or assistance provided, it is not possible to evaluate the nature of any hardships as they relate to their medical or emotional wellbeing.

Though the record is sufficient to establish the applicant's parents would experience a degree of hardship in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's parents would suffer extreme hardship as a result of separation from the applicant.

To demonstrate the hardship her spouse would experience if he were to relocate to Mexico to be with her, the applicant indicates that: she and her spouse have made a life together in the United States, where they intend to buy a house and provide their children a good life; her spouse has a good job in the United States; there is no work for him in Mexico; and he works hard to afford their children better opportunities. The applicant also indicates she does not want their daughter to attend school in Mexico, as the educational system "does not teach the kids as well"; and her daughter, who wants to be a doctor, would be able to obtain scholarships to go to college in the United States, whereas, the applicant and her spouse would be unable to afford a college education in Mexico. In addition, as mentioned previously, the applicant indicates that her spouse fears for his family's safety in [REDACTED] Mexico, due to the violent conditions there.

The applicant refers to hardship that her children would experience if they were to relocate with her to Mexico; however, they are not qualifying relatives under section 212(i) of the Act, and the record does

not sufficiently show how hardship to them would affect the applicant's qualifying relatives, her U.S. citizen spouse, U.S. citizen father, and lawful permanent resident mother.

Although the record contains some indication that the applicant's spouse built a home in Mexico, and it does not sufficiently demonstrate labor or employment conditions in Mexico, the record reflects that the applicant's spouse has lived in the United States for over 15 years, where he maintains strong family ties and steady employment. Also, in its latest travel warning for [REDACTED] Mexico, where the applicant and her spouse last lived and where they would reside, the U.S. Department of State indicates:

Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of organized crime-related violence, have occurred throughout [REDACTED]. Armed members of some other self-defense groups maintain roadblocks and, although not considered hostile to foreigners or tourists, are suspicious of outsiders and should be considered volatile and unpredictable. Some groups in [REDACTED] are reputed to be linked to organized crime.

Travel Warning, Mexico, last updated December 24, 2014.

We thus conclude that, were the applicant's spouse to relocate to Mexico to be with the applicant due to her inadmissibility, he would suffer extreme hardship given his length of residence in, and ties to, the United States; conditions in Mexico; and the normal hardships associated with relocation. The record reflects that the cumulative effect of the hardship the applicant's spouse would experience as a result of the applicant's inadmissibility rises to the level of extreme.

To demonstrate the hardship they would experience if they were to relocate to Mexico to be with the applicant, the applicant's parents indicate that they do not want to live permanently in Mexico, they do not want their younger sons to grow-up there because of its violence, and they fear that their sons would not complete their education there.

The applicant's parents refer to hardship that their sons would experience if they were to relocate with the applicant to Mexico; however, their sons are not qualifying relatives under section 212(i) of the Act, and the record does not sufficiently show how hardship to them would affect the applicant's qualifying relatives, her U.S. citizen father and lawful permanent resident mother.

Although the record contains some indication that the applicant's parents maintain family ties in Mexico, it sufficiently demonstrates that the applicant's father became a lawful permanent resident almost 24 years ago and that he maintains strong family ties and steady employment in the United States. Moreover, the applicant's mother, as a lawful permanent resident of the United States, could jeopardize this status should she become permanently domiciled in Mexico to join the applicant. As mentioned previously, the U.S. Department of State has issued a travel warning for [REDACTED] Mexico, where the applicant and parents last lived and where they would reside.

We thus conclude that, were the applicant's parent to relocate to Mexico to be with the applicant due to her inadmissibility, they would suffer extreme hardship given the applicant's father's length of residence in, and extensive family ties to, the United States; conditions in Mexico; and the normal hardships

associated with relocation. The record reflects that the cumulative effect of the hardship the applicant's parents would experience as a result of the applicant's inadmissibility rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to qualifying relatives in the scenario of separation *and* the scenario of relocation. A claim that qualifying relatives 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. at 886. 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen spouse, U.S. citizen father, or lawful permanent resident mother as required under section 212(i) of the Act.

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.