



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 02 2015**

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 waiver application was denied by the Field Office Director, Los Angeles, California 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 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 fraud or willful misrepresentation. He is the spouse of a lawful permanent resident and father of a U.S. citizen. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Field Office Director's Decision*, dated August 7, 2014.

On appeal, the applicant asserts "an affirmative defense" for the actions underlying his inadmissibility, i.e., he was a minor and lacked the capacity to understand the nature of his misrepresentation. The applicant further asserts that by denying his waiver application, the Field Office Director violated his qualifying relative's rights under the Americans with Disabilities Act (ADA). *Brief in support of appeal*, dated September 8, 2014.

The record of proceeding includes, but is not limited to: counsel's brief; statements from the applicant and his spouse; country-conditions information concerning Mexico; a press release of President Obama regarding mental-health awareness; a psychological evaluation of the applicant's spouse; documents establishing identity and relationships of the applicant, his qualifying relative, and her family in the United States; letters regarding the applicant's good moral character; financial documentation; medical documentation; and school records for the applicant's spouse. The entire record was reviewed and all relevant evidence considered in a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, 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 reflects that on August 8, 1999, the applicant entered the United States using an I-586 Border Crossing Card issued in another person's name. As a result he was found inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking a benefit under the Act through fraud or the willful misrepresentation of a material fact, and he must seek a section 212(i) waiver of inadmissibility. The applicant contests the finding of inadmissibility.

The applicant asserts that he was a minor when he entered the United States and lacked the capacity to understand the consequences of his using false documents. The applicant further asserts that the Field Office Director violated his qualifying relative's rights under the Americans with Disabilities Act (ADA) by denying the waiver. Finally, the applicant asserts that he did not understand English, had no idea that he could get into trouble, and wanted to protect his family.

There is no statutory exception for minors to inadmissibility under section 212(a)(6)(C)(i) of the Act. Where a provision is included in one section of law but not in another, it is presumed that Congress acted intentionally and purposefully. See *In re Jung Tae Suh*, 23 I&N Dec. 626 (BIA 2003) (citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)). Unlike section 212(a)(6)(C)(i), two other grounds of inadmissibility in section 212(a) contain express exceptions for minors. An exception is provided under section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to section 212(a)(9)(B)(iii)(I) of the Act. By comparison, section 212(a)(6)(C)(i) of the Act provides for the inadmissibility of "any alien" who commits fraud or willful misrepresentation of a material fact in an attempt to gain a benefit. The sub-clause does not include an age-based exception, and we cannot assume such an exception was intended. For this reason, the fact that the applicant was age 17 when he made the material misrepresentations is not, by itself, enough to establish that he is not inadmissible.

Nor, however, is his age completely irrelevant. As the Supreme Court has noted, "A child's age is far 'more than a chronological fact.' . . . It is a fact that 'generates commonsense conclusions about behavior and perception.'" *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal citations omitted). Fraud consists of "false representations of a material fact made with knowledge of its falsity and with intent to deceive." See *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. See *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." See *Mwongera*, *supra*.

Therefore, when assessing a claim that an applicant lacked capacity to incur inadmissibility due to his or her minor age at the time of the misrepresentation, the adjudicator must weigh the totality of the circumstances presented in the evidence of record and determine whether the applicant possessed the maturity and judgment to comprehend both the falsity, and the potential consequences of, a false statement. Based on this understanding, we find that an evaluation of whether an applicant who made a material misrepresentation while under the age of 18 possessed, at the time, the capacity to make a willful misrepresentation of a material fact must be the result of an individualized inquiry into that particular applicant's maturity level and ability to understand the nature and consequences of his false statement. The applicant bears the burden of demonstrating that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Therefore, he has

the burden to prove that, when he made the material misrepresentations, he lacked capacity to willfully misrepresent a material fact.

In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her because fraudulent conduct “necessarily includes both knowledge of falsity and an intent to deceive” and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was “even further beyond the pale” than imputing a parent’s negligence to that child. *Id.* at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud. 546 F.3d 890, 892-893 (7th Cir. 2008). While the brothers contended that the immigration judge had erred by imputing their father’s fraud to them, the court concluded that the brothers, “given their ages at the time” as well as the fact that they had actively participated in perpetuating the false information, were accountable for the misrepresentations. The court also noted that the Board had previously acknowledged that while the brothers were young at the time their father filed for asylum, “they were old enough to know better and to be held accountable for their actions.” 546 F.3d 890, 892 (7th Cir. 2008).

The age of the applicant in the present case is identical to that of the 17-year-old brothers in *Malik*. At 17 years of age, the applicant certainly would have been considerably more cognizant of his misrepresentations than a five-year-old child whose parents had misrepresented her immigration status on her behalf. Furthermore, unlike the brothers in *Malik*, the applicant in this case acted alone and presented himself as a border crossing card holder at [REDACTED] California, and the record does not indicate that any other person influenced his actions. The applicant has not shown that he lacked the capacity to understand the nature and consequences of presenting falsified documents to gain entry into the United States. Accordingly, we find that he willfully misrepresented a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

The applicant also asserts that the decision to deny his waiver violates his spouse’s rights under the ADA. The applicant indicates that his spouse suffers from anxiety and asserts that the Field Office Director did not consider the mental-health ramifications of her decision. We are not persuaded by counsel’s claim. The applicant did not show how the Field Office Director denied the applicant’s spouse’s rights under the ADA. He has not established that his wife is disabled, as the term is defined by the ADA. Moreover, the ADA prohibits discrimination against people with disabilities in transportation, employment, public accommodation, government services and communication. The applicant does not assert that a particular provision of the ADA compels a different interpretation of immigration law.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (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.

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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. 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 U.S. Citizenship and Immigration Services (USCIS) 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 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 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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 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 *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 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. In the present case, the applicant's spouse 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 spouse.

We now turn to the question of whether the applicant has established that a qualifying relative would experience extreme hardship if she remains in the United States without him.

On the Form I-601, the applicant states that he has known his wife for eight years and that they wed in October 2012. He asserts that if he is separated from his wife and son, his wife would suffer extreme hardship. He explains that his wife was on bed rest during her second pregnancy. Although the record reflects that the applicant's spouse had complications during her pregnancy, almost one year has lapsed since the applicant filed this application, so we may deduce that his wife is no longer incapacitated.

The applicant's spouse states that she would suffer financial hardship without the applicant because he is self-employed and she earns no income. The record includes a 2013 letter from the applicant's spouse, in which she indicates that she was then self-employed at a full-time mobile tire repair service that she started in 2010. According to the applicant, he also is self-employed with this company. The applicant states that his wife takes care of their household and helps with the business part-time. The tax returns the applicant submits show that he earned as little as \$3,600 and as much as \$37,750 when filing individually. The applicant also submits his wife's Social Security Statement, showing that she earned \$6,882 in 2008 and \$25,109 in 2012. However, the applicant's wife's wages are not included in the couple's 2012 joint tax return. No wages were listed on the couple's joint 2012 Form 1040, only business income in the amount of \$27,000. The evidence is inconsistent regarding his spouse's income in 2012. Moreover, in the projected financial statements he submits, the applicant assumes that his wife will not earn income, but he does not explain why she cannot work after she recuperates from child birth.

In addition to financial hardship related to the family's earnings, the applicant submits copies of bills from utility and cable companies and several retail companies, reflecting an inability to pay many balances in full each month. According to their expense statement, approximately \$600 per month is paid to credit-card companies.

Concerning her emotional and psychological hardship, the applicant's spouse states that without the applicant she would experience stress, anxiety, and depression. She further indicates that their son suffers from asthma and fears that he also would suffer emotionally if he is separated from the applicant. The applicant submits a report written by a marriage and family therapist, indicating that the applicant's wife's health would suffer because she was then seven months pregnant and suffering from placenta previa that required her to be on bed rest. In addition, the therapist states that the applicant's wife once suffered from panic attacks, and if the applicant were to remain in Mexico for a long time, his wife would suffer from panic attacks again.

The applicant's spouse states that she anticipates that she would become homeless and require government assistance to provide for their children if the applicant returns to Mexico without her. She says that he has little education and would be unable to find work in Mexico that paid wages sufficient to support him and their family. She also states that she depends upon the applicant to drive her to appointments and run errands, because she does not know how to drive.

Taking into account the applicant's evidence asserting that his spouse would experience financial and emotional hardship, we find the record does not establish that the hardships the applicant's spouse faces as a result of separation from the applicant, considered in the aggregate, rise to the level of extreme.

Next, we will discuss whether the applicant has established that his qualifying spouse would suffer extreme hardship if she relocated to Mexico with the applicant.

The applicant and his spouse both express concern about facing drug-related violence in Mexico. Although the applicant does not indicate where he and his spouse would reside in Mexico, the record reflects that the applicant was born in the Mexican state of [REDACTED] and that his wife was born in [REDACTED]. According to the Department of State's Travel Warning for Mexico, updated December 24, 2014, [REDACTED] is "a key region in the international drug and human trafficking trades," and rural [REDACTED] should be avoided.

We have considered the applicant's spouse's claims that given the economy of Mexico, the applicant would not be able to find employment that would provide him with sufficient income to support his family. The applicant submits documentary evidence that addresses the standard of living in Mexico, but it is too general to provide a basis to evaluate the applicant's claims.

The applicant asserts that moving his family to Mexico is not an option because their child has only known the United States as his home country. In addition, evidence in the record shows the applicant's wife emigrated to the United States at age 4. She attended school in the United States up until the 11th grade. Her parents and siblings reside in the United States as lawful permanent

residents. The applicant and his wife have been married for two years and have two U.S. citizen children under the age of 4.

The applicant's spouse claims that their 4-year old child's life would be disrupted by moving to Mexico and asserts that she would suffer as a result of his hardships. She further asserts that her son suffers from asthma and fears that he would also suffer emotionally if he is separated from the applicant. As previously discussed, hardship to an applicant's children is considered in section 212(i) proceedings only to the extent that it affects the qualifying relative. It appears that the applicant's spouse would be affected emotionally by their child's hardships.

We have evaluated the applicant's evidence of country conditions, in addition to evidence of the applicant's spouse having resided in the United States most of her life, her extensive family ties in this country, and her emotional difficulties related to their children's hardship. Considered cumulatively with the usual hardships of relocation, we conclude the applicant has shown that she would experience extreme hardship if she were to relocate to Mexico.

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 relatives in this case.

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 will be dismissed.