



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAR 02 2015** OFFICE: SAN FERNANDO VALLEY

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:  
[REDACTED]

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, San Fernando Valley Field Office, and 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for gaining admission to the United States using fraudulent documents. The applicant is married to a U.S. citizen, who filed a Form I-130, Petition for Alien Relative, on her behalf. She seeks a waiver of inadmissibility under section 212(i) of the Act in order to reside in the United States.

The Field Office Director determined that the applicant failed to establish that the bar to her admission would result in extreme hardship for a qualifying relative, as required for a waiver under section 212(i) of the Act. The Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Officer Director*, dated July 18, 2013.

On appeal, the applicant asserts that the Field Office Director failed to consider all evidence of extreme economic and psychological hardship to the applicant's spouse if the waiver was denied and the applicant was forced to return to Mexico.<sup>1</sup> *Form I-290B, Notice of Appeal or Motion*, filed August 19, 2013.

The record includes, but is not limited to: a psychological report; a statement of expenses; court and financial records; photographs; and statements from the applicant, her husband and mother-in-law. 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, that:

- (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 Secretary of the Department 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.

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<sup>1</sup> The appeal was filed on August 19, 2013. We received the appeal on October 21, 2014.

The record reflects that the applicant entered the United States on or about November 30, 1990, using fraudulent documents. She is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest this 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's U.S. citizen 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1966).

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.

We will first address hardship to the applicant’s spouse if he relocates to Mexico to be with the applicant. The applicant’s spouse, a native of Mexico, states that his elderly mother, three siblings, and two U.S. citizen children live in the United States, and if he relocates to Mexico he would be forced to abandon them. He further states that he has numerous financial obligations and that if he and the applicant lived in Mexico, they would not earn enough to meet those obligations. The record reflects the applicant’s spouse has two U.S. born sons who now are ages 25 and 35. According to the social worker who evaluated the applicant’s spouse, the applicant has frequent contact with his sons.

The applicant submits evidence of her family’s income and expenses, to corroborate claims that her spouse would experience financial hardship if he relocates to Mexico. The applicant’s spouse asserts that he has worked for the same employer for 20 years and has taken out a loan from his retirement account to cover the family’s expenses in the United States.

Addressing hardship related to country conditions, the applicant’s spouse states that he is concerned about the drug-related crime in Mexico, particularly in [REDACTED] the applicant’s home state. The applicant is a native and former resident of [REDACTED] Mexico. The Department of State, in its most recent travel warning for Mexico, advises travelers to defer “non-essential travel to areas of the state that border the states of Michoacán and Zacatecas,” where “[t]he security situation . . . continues to be unstable.” [REDACTED] Moreover, the applicant’s spouse was born in [REDACTED] and resided in [REDACTED] Mexico, a key region in the international drug and human trafficking trades, according to the same travel warning.

Evidence in the record shows that the applicant’s spouse has lived in the United States since he was 17 years old; his lawful permanent resident mother, his two U.S. citizen sons, and three siblings reside in the United States. If he were to relocate to Mexico, in addition to separating from his

closest family members, the applicant's spouse would lose his current job as a maintenance mechanic, where he earns an annual salary of \$57,000 with full benefits, and he likely would not be able to repay the loan he took from his own retirement account. Given his age and time away from Mexico, it is reasonable to conclude that the applicant's spouse would experience difficulty finding suitable employment there. The applicant has established that her qualifying spouse would suffer extreme hardship upon relocating to Mexico.

Next, we will address hardship to the applicant's spouse if the applicant returns to Mexico and he remains in the United States. Her spouse states that he is obligated to help support his mother and pays alimony to his first and second wives. He further states that although he has worked for the same company for more than 20 years and earns a good salary, he relies heavily upon the applicant's income to help him pay his expenses; if she returns to Mexico, she would be unable to continue helping him to meet those expenses. The record indicates that the applicant works part-time in the United States as a machine operator for a printing company. The applicant's spouse states that if the applicant were to return to Mexico, she would be unable to support herself there, let alone her mother, to whom she currently sends money. Finally, the applicant's spouse states that he suffers emotional hardship just thinking about being separated from the applicant and about the unsafe conditions in her area, [REDACTED] that could affect her. According to a psychological evaluation dated August 17, 2013, the applicant's spouse is currently experiencing severe emotional distress from anticipating a separation from the applicant.

The applicant's spouse asserts that he pays spousal support to both his first and second wives. The applicant provides copies of her spouse's divorce decrees, court orders, canceled checks, money orders, and earning statements. According to an order dated March 1, 2000, the applicant's spouse was ordered to pay monthly child support in the amount of \$338 until his youngest son reached the age of 18, in 2007. The record contains an order and stipulation that the applicant's spouse would pay \$400 per month in spousal support to his son's mother, beginning August 1, 2000. In addition, the record contains a court order dissolving the marriage of the applicant's spouse and his second wife on June 15, 2012 and ordering the applicant's spouse to pay \$400 a month in spousal support for 24 months or until he finds employment.<sup>2</sup> The record contains documentation to show the applicant's spouse paid support to his second wife, but it appears that obligation has expired, since more than 24 months have lapsed since the date of the order.

The applicant's spouse asserts that he would experience financial hardship because he relies on his wife to help him meet his financial obligations. The applicant's spouse states that he has borrowed money from his 401K to meet expenses. The applicant submits her spouse's earnings statements showing deductions for loan repayment in the amount of approximately \$438. The record also includes rent receipts, tax forms, bank records showing charges for gas, phone bills, and a declaration from her spouse's mother, who states he gives her \$100 each month. The applicant also includes her spouse's list of recurring expenses, which includes spousal support to his two former

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<sup>2</sup> The qualifier "until he finds employment" is incongruous with his testimony that he has been working for the same employer for the past 20 years.

wives in the amount of \$800. He indicates that the applicant covers approximately \$560 of those monthly expenses. Tax records show that the applicant earned \$7,134 in 2011.

The record contains copies of joint bank account statements showing that the applicant's spouse's salary is direct-deposited into their account. The record lacks corresponding evidence to show that the applicant similarly deposits her salary into their joint account. Moreover, the applicant does not assert that she financially assists her husband. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Although the record shows that the applicant's spouse's expenses exceed his income, the only evidence offered to show that he relies upon the applicant to meet those expenses consists of his testimony and a letter from prior counsel, who stated that without the extra income of the applicant, her spouse would be unable to support himself.

The applicant's spouse asserts that if the applicant were forced to return to Mexico, she would earn far less in Mexico and could not support herself there, adding to his economic hardship. However, the applicant submits no country-conditions information to support this assertion. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

The applicant's spouse asserts that he would suffer emotional or psychological hardship if the applicant were forced to return to Mexico. He said that he cannot live without her and that their lives are inseparable. In a psychological report, a social worker states that the applicant's spouse told her that he relies heavily on the applicant for emotional support and that he is concerned about resuming drinking. She states that he is suffering from severe depression, insomnia, anxiety, and weight loss as he anticipates their separation.

The applicant's spouse also claims that his concerns about the applicant's safety in Mexico, specifically in [REDACTED], worry him "incessantly," given the active drug gangs and weekly murders there. We acknowledge the applicant's spouse's claims regarding Mexico's crime rate, given the most recent travel warning from the Department of State.

We further acknowledge that the applicant's spouse is 57 years of age, has lived in the United States since he was 17 years old and that he has two U.S. citizen adult sons living in the United States. However, the applicant has not established that the hardship her husband would endure if he remained in the United States considered in the aggregate, amounts to extreme hardship

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 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 in this case.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act be above and beyond the normal, expected hardship involved in such cases.

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 U.S. citizen 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.