



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 26 2015** Office: LOS ANGELES

FILE: [Redacted]
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IN RE: [Redacted]

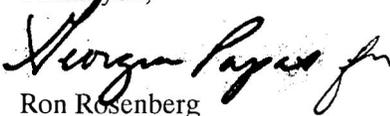
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 Los Angeles Field Office Director 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of several approved Forms I-130, Petitions for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish that her U.S. citizen spouse would suffer extreme hardship as a result of the denial of her application and denied the waiver application accordingly.

On appeal, the applicant, through counsel, asserts the Field Office Director abused her discretion in finding that the applicant failed to submit sufficient evidence to establish extreme hardship to her spouse. According to counsel's brief, the applicant would submit additional evidence relating to hardship with the appeal. The record does not include evidence received after the applicant's Form I-290B, Notice of Appeal or Motion, and counsel's brief. The record, therefore, is considered complete as of the date of this decision.

The record of proceeding includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant, her spouse and children; financial documentation; psychological evaluations; and, letters attesting to the applicant's good moral character.

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

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

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.

The record reflects that on December 7, 1996, the applicant attempted to enter the United States by presenting a Form I-586, Border Crossing Card, in someone else's name. The applicant is therefore

inadmissible under section 212(a)(6)(C)(i) of the Act, for having sought admission to the United States through fraud or misrepresentation. On December 10, 1996, the applicant was removed from the United States. The applicant re-entered the United States without inspection later that month. She has remained in the United States since that time. The applicant does not contest the finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-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 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.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s U.S. citizen spouse is her only qualifying relative, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The first issue to be addressed is whether the applicant has established that her qualifying spouse would suffer extreme hardship if he relocated to Mexico with her.

The record reflects that the applicant’s spouse, who has lived in the United States approximately 30 years, has been working for the same employer since 1999 as a machinist and if he relocated to Mexico, he would lose his current job and health insurance benefits. He also expresses concern about his ability to meet his responsibilities if he returned to Mexico. The record lacks evidence of labor or employment conditions in Mexico to address her spouse’s ability to earn a living there. 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)). Without additional information we are not in a position to reach a different conclusion concerning the severity of hardships related to the applicant’s spouse’s financial circumstances.

With respect to medical hardship he might experience in Mexico, the applicant asserts that her husband was recently diagnosed as pre-diabetic. Counsel indicates that he would submit supporting evidence to corroborate this assertion, but he has not provided it.

The applicant and her spouse have purchased a house in the United States. If they both relocated to Mexico, they would presumably sell their home here. The applicant’s spouse asserts that they share

their home with his mother and their children. Two of their children currently attend college. One of their children recently graduated from college. Two of the three live with the applicant and her spouse. If the applicant's spouse relocated with her, he asserts he would experience emotional distress, because he also would need to uproot his mother and children.

We note the applicant's spouse's claims that their children's lives would be disrupted if he and the applicant moved to Mexico. The applicant also provides statements from her children attesting to the central role she plays in their lives. However, 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. In the present case, the record provides insufficient documentation to establish the impact of her adult children's hardships on the applicant's spouse.

Having considered the applicant's claims and the evidence provided to support them, we are unable to conclude that the applicant's spouse would experience extreme hardship if he returned with her to Mexico. Although we observe that the applicant's spouse would experience the disruptions and difficulties normally created by relocation, we do not find these hardships, even when considered in the aggregate, to meet the extreme hardship standard of section 212(i) of the Act. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Accordingly, the applicant has not established that her spouse would suffer extreme hardship upon relocation.

The next issue to be addressed is whether the applicant has established extreme hardship to her qualifying spouse if he remains in the United States.

The applicant and her spouse have been married 26 years. The applicant's spouse states that he and his wife have a close bond and that together they have fostered a nurturing home for their three children. He further states that if they were separated, his world would be turned upside down. He says that he had hoped to pursue higher education for himself, but without the applicant, he might have to abandon those dreams. On appeal, the applicant's spouse states he abandoned his studies because of his stress. He also states he has difficulty going to sleep at night, has begun overeating and is less attentive to his work as a result of this stress. In a psychological assessment, the applicant's spouse was deemed to be moderately depressed and anxious at the prospect of being separated from his wife and the breakdown of his family unit. In addition, the applicant's spouse expresses concern about the applicant's health should she be forced to return to Mexico. He states that she is diabetic and that if she left the United States, her health would be at risk. The applicant does not provide documentation regarding her own medical condition. As stated above, 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.

The applicant's spouse expresses concern that he would be unable to provide for two households should he and the applicant be separated. The applicant has been a housewife throughout their marriage and would not be readily employable in Mexico. 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 sole 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 find employment and assist her spouse in maintaining their households. 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.

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.

ORDER: The appeal is dismissed.