

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



H6

DATE: **SEP 18 2012** OFFICE: MEXICO CITY FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. The application 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. She 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 into the United States through fraud or material misrepresentation. 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), to reside in the United States with her U.S. lawful permanent resident spouse.

In a decision dated November 9, 2011, the District Director concluded that the hardship that the applicant's U.S. lawful permanent resident spouse would suffer did not rise to the level of extreme as required by the statute and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest her inadmissibility, but states that her spouse will in fact suffer from extreme hardship as a result of her inadmissibility.

In support of the waiver application, the record includes, but is not limited to a letter from the applicant's spouse, biographical information for the applicant and her spouse, medical records for the applicant, employment and financial records for the applicant's spouse, documentation on the country conditions in Mexico, letters of support concerning the applicant's moral character, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides:

(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 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 Attorney General 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 Attorney General regarding a waiver under this clause.

The applicant is also inadmissible under section 212(a)(6)(C) of the Act, which 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 a waiver for section 212(a)(6)(C). That section states that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 applicant states that she was admitted to the United States in January 2006 with a fraudulent U.S. border crosser card ("laser visa").¹ The applicant remained in the United States unlawfully through her departure in January 2011. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation of a material fact. Additionally, as a result of the applicant's remaining in the United States beyond the period of time allotted to her through the border crossing card, she accrued one year or more of unlawful presence in the United States. The applicant is, therefore, inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The unlawful presence ground of inadmissibility applies to the applicant for a period of ten years from her departure in January 2011. The applicant's inadmissibility under section 212(a)(6)(C) of the Act; however, is a

¹ The record also indicates that the applicant was apprehended in Roswell, Mexico on November 16, 2001. Her then validly issued border crosser card was cancelled, as the applicant had remained in the United States for 92 days beyond the time allotted to her at the time of her admission. The record indicates that the applicant voluntarily returned to Mexico on November 16, 2001.

permanent grounds of inadmissibility. The applicant does not contest her inadmissibility on appeal.

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 U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under section 212(a)(9)(B)(v) of the Act. In this case, the applicant's qualifying relative is her U.S. citizen spouse. Hardship to the applicant is only relevant under sections 212(a)(9)(B)(v) and 212(i) of the Act to the extent that the hardship is shown to cause hardship to the qualifying relative. If extreme hardship to his qualifying relative is established, the applicant is statutorily eligible for a waiver, and 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 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 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.

On appeal, the applicant’s spouse states that he will suffer from extreme hardship as a result of the applicant’s inadmissibility. In his statement, the applicant’s spouse primarily focuses on hardship to the applicant as a result of her inadmissibility. In particular, the applicant’s spouse submitted evidence of the applicant’s medical conditions and provided an explanation of her condition. The applicant’s spouse also stated that the applicant has been unable to continue to pursue educational and employment opportunities in the United States. As stated above, Congress did not include the applicant as a qualifying relative under sections 212(a)(9)(B)(v) or 212(i) of the Act. And, here, the applicant’s spouse has not shown how the applicant’s medical conditions or inability to pursue her educational and career goals has caused him hardship. In fact, on appeal, the applicant’s spouse states that with his current income he is able to meet his expenses in the United States and provide support to the applicant in Mexico. There is no indication in the record that the applicant’s spouse is suffering from financial hardship as a result of the applicant’s inadmissibility. The applicant’s spouse also states that he is suffering emotional hardship as a result of his separation from the applicant. The AAO recognizes that the applicant and her spouse were married on January 24, 1977; however, the record indicates that the applicant’s spouse became a permanent resident of the United States on December 1, 1990 and that the couple has been separated for most of their marriage, with the applicant residing in Mexico for the majority of the time. The applicant’s spouse also states that he is worried for his spouse’s safety in Mexico and the record demonstrates that the safety concerns in Mexico have become more severe in recent years. In particular, the AAO notes the U.S. Department of State Travel Warning for Mexico, which was updated on February 8, 2012, and states the particular dangers in the State of Chihuahua, where the applicant resides. The applicant has not illustrated; however, how she has been affected by the safety situation in Mexico. There is also no evidence in the record of how the applicant’s situation in Mexico is causing her spouse hardship. Although the applicant’s spouse’s

assertions are relevant and have been taken into consideration, 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)). The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant’s spouse states that he would suffer financial hardship as well as the severance of family ties if he were to relocate to Mexico. The record contains documentation of the applicant’s spouse’s credit card debt in the United States, but there is no indication of the applicant’s spouse’s inability to repay that debt, which totals approximately \$3,000, if he were to relocate to Mexico. The applicant’s spouse does not provide documentation that he would not be able to provide for his basic needs in Mexico. Again, 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 at 165. Additionally, although the applicant’s spouse states that he would miss being able to see his siblings who reside in New Mexico, the type of hardship that he describes, such as the inability to engage in weekend cookouts, does not rise to the level of extreme, even when considered in the aggregate with any speculative safety concerns and financial hardship that the applicant’s spouse would experience. The applicant’s spouse is a native of Mexico, presumably speaks Spanish, and there is no documentation to illustrate that he would be unable to support himself financially in Mexico. 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. *Matter of O-J-O-*, 21 I&N Dec. at 383.

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 sections 212(i) and 212(a)(9)(B)(v) 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under sections 212(i) and 212(a)(9)(B)(v) 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 proceedings for an application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.