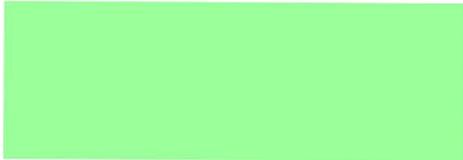


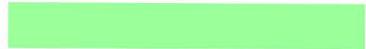


(b)(6)

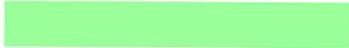


DATE: **JUN 26 2013**

Office: ANAHEIM



IN RE: Applicant:



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

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 in accordance with the instructions on 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.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and it 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 seeking to procure U.S. admission by fraud or willful misrepresentation, and under section 212(a)(9)(B)(i)(II) of 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. She is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband and live with her family.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, November 5, 2012.

On appeal, the applicant claims through her husband that a qualifying relative would suffer extreme hardship due to the waiver denial. The record on appeal consists of an updated hardship statement of the applicant's husband, a summary of claimed monthly expenses and income, an untranslated bank statement, and an employment letter, as well as of evidence submitted with the waiver application, including statements of the qualifying relative and support statements of friends.

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

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)(1) of the Act provides:

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 [...].

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 [now the Secretary of Homeland Security (Secretary)] 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 (Secretary) 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....

The record indicates the applicant entered the United States on February 1, 2004 using another person's travel document and remained here until March 27, 2012, when she departed to apply for an immigrant visa. The field office director found that she had thereby incurred inadmissibilities for fraud or willful misrepresentation and for unlawful presence of one year or more.¹

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 husband 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 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

¹ The record shows that the applicant was convicted of Petit Larceny in July 2008 and sentenced to 30 days jail time with the sentence suspended. The applicant was not found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, and it appears a consular officer determined that the applicant's conviction fell under the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act. Further, because the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, and demonstrating eligibility for a waiver under sections 212(i) and 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO need not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

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 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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from separation, there is no documentary evidence that the applicant's husband has incurred emotional hardship from his wife's absence beyond the normal and typical impact of separation from a loved one. Although the qualifying relative contends his wife's inability to immigrate is difficult for him, there is nothing on record to substantiate that her absence has caused any specific harm. There is also no documentation supporting his claim that her absence may cause his children emotional problems. The record fails to show that the applicant's husband is unable to

visit his wife to ease the emotional pain of separation. 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)).

Regarding financial hardship, the qualifying relative submits an itemized statement of his monthly expenses and income, but the only substantiation offered is a statement identified as being from his children's babysitter regarding monthly childcare charges. The AAO notes that the qualifying relative's statement and the babysitter's statement are both unsworn, and are not supported by pay stubs, tax returns, W-2s, or receipts. An employment letter confirms the qualifying relative's 2012 employment, but without specifying a pay rate, and the only other evidence of a job is the claim on his Biographic Information Form (G-325A) that he worked from 2005 to 2012 for a casino. There is no documentation confirming the applicant's or her husband's employment history, earnings history, or daily living expenses here or in Mexico. While we are sensitive that the applicant's departure left her husband a single parent to their children, the applicant has provided insufficient evidence to show that her absence has caused her husband economic problems.

Documentation on record, when considered in its totality, does not show that the applicant's husband is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the qualifying relative will endure some hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish hardship to a qualifying relative that rises to the level of "extreme" under the Act.

Regarding relocation, the applicant's husband states that he worries about his children's safety in Mexico, due to dangers such as kidnapping, as well as about their ability to adjust to life there. There is no evidence regarding his children's lifestyle in the United States, but we note from their ages – 6, 2, and 1½ years old – that only one is school-age. Although there is nothing to support the qualifying relative's concern that the children will have difficulty adjusting to life with their mother in Mexico, we note that official U.S. government reporting reflects that personal safety is an issue in parts of the country. *See Travel Warning—Mexico*, November 20, 2012. However, the record contains no specific information that the applicant lives in a dangerous area or is subject to a particular threat and, as U.S. citizens, his children are not required to relocate, with any decision that they do so being a matter of parental choice. Therefore, the applicant is unable to show that her children would suffer sufficient hardship upon coming to live with her as to impose extreme hardship on her husband, whether or not he chooses to relocate with them.

The qualifying relative also claims that it would be hard for him to move to Mexico and find work to support his family, but fails to show that he has explored job prospects there or that his wife would be unable to work to help support the family. The AAO is sensitive that the prospects of becoming a single parent or having his children move to Mexico might be equally untenable to the applicant's husband. However, without any evidence how the children's situation will affect their father, or how returning to the country he left only eight years ago will adversely impact him, the applicant cannot show hardship that rises to the level of "extreme." The AAO thus concludes that, were the applicant

unable to reside in the United States due to her inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship if he relocated to live with the applicant.

The documentation on record, when considered in aggregate, reflects that the applicant has not established her husband will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, 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.