



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF P-A-S-P-

DATE: DEC. 30, 2015

APPEAL OF FRESNO FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i). The Director, Fresno Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant is the Beneficiary of an approved Form I-130, Petition for Alien Relative, and seeks a waiver of inadmissibility in order to reside with her spouse in the United States. The Director found the Applicant 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 to the United States through fraud or misrepresentation. In a decision dated April 2, 2015, the Director concluded the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts she provided sufficient evidence to show that extreme hardship to her spouse would result from her inability to remain in the United States. In support, she offers her updated statement, receipts for expenses, an article regarding stress, and copies of tax returns. The record contains documentation previously submitted including: copies of divorce, marriage, and birth certificates; copies of travel documents; financial information; and a previous statement. The entire record was reviewed and considered in rendering a decision on the appeal.

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 [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 [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 reflects that the Applicant procured admission a series of times from February 2008 until April 2012 using her Border Crossing Card/Laser Visa, which expired on May 8, 2012, by claiming each time to be coming for a short visit with her father, when she was actually returning to resume her residence with him and her U.S. employment. *See* Record of Sworn Statement, July 23, 2014. The Applicant does not dispute that she is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation. The record indicates that after one of her entries with her Border Crossing Card, she remained in the United States for over one year after her period of authorized stay expired before returning to Mexico. The Applicant is therefore also inadmissible pursuant to 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. The Applicant thus requires a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act.

A waiver of inadmissibility under sections 212(i) and 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 U.S. citizen 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 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 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

*Matter of P-A-S-P-*

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 (9<sup>th</sup> Cir. 1998) (quoting *Contreras Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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.

Although the Applicant asserts that her spouse would find it devastating to leave the country, he himself makes no claim that relocating abroad to remain with the Applicant would impose a hardship upon him, and there is no evidence he has considered leaving the United States. The record shows that the 22-year-old qualifying relative is born and raised in this country, but contains no support for the Applicant's claim that her spouse has deep roots in the community. The record reflects that he was born in [REDACTED] California, but now lives several hundred miles away, northeast of [REDACTED] in the home of his wife's parents and her 18- and [REDACTED]-year-old children from another relationship. While the Applicant's parents and teenage children represent the Applicant's ties to the community, there is no documentation the qualifying relative has any ties to the area other than employment and the Applicant's family. While we are sensitive to the Applicant's reference to safety issues in Mexico, there is no evidence her spouse shares those concerns and no documentation supporting the claim that the Applicant or her family would be the target of any specific threats in Mexico, where she lived before settling in the United States in 2008 at the age of 33. Considering the entire record and based on a totality of the circumstances, we conclude the Applicant has not established that her spouse would suffer extreme hardship were he to relocate abroad to live with her.

The Applicant claims that if she departs the United States, the impact of her absence upon her spouse would exceed the common or typical consequence of removal and rise to the level of extreme due to the resulting loss of emotional and psychological support, closeness with her children, and contribution to household income. The record contains no statement from the qualifying relative, and there is no documentation he has any physical or mental health condition requiring care or assistance that only the Applicant may provide, nor any evidence for the Applicant's claim that her spouse suffers from depression. Based on the record, we cannot conclude that separation from the wife he married in November 2013 will have the claimed consequences. Although we recognize that the Applicant's return to Mexico will cause a degree of hardship to her spouse, the Applicant has not shown he will experience hardship beyond the common or usual consequence of family separation. Further, there is no evidence that he will be unable to visit his wife to ease their separation.

Regarding financial hardship, the record is inconclusive regarding the Applicant's contribution toward household income. The couple's 2014 joint tax return reports income of \$35,000, without specifying the relative earnings of each spouse. For 2013, they reported joint income of nearly \$30,000, of which the Applicant appears to have earned less than half. However, for 2013, the record also reflects that the qualifying relative's in-laws, with whom he and his wife lived and are currently residing, reported

*Matter of P-A-S-P-*

income of about \$40,000. As the Applicant has not established the degree to which her spouse relies upon her income, she has not established that without her support he will become unable to meet expenses. While sensitive that the Applicant's departure would remove a wage earner from the household, there is no showing that her spouse would be unable to meet his financial obligations in her absence.

For all these reasons, while we recognize that the Applicant's absence will cause hardship to her spouse, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to him due to her inadmissibility would rise to the level of extreme. We conclude based on the evidence provided that, were he to remain in the United States without the Applicant due to her inadmissibility, her absence would not cause him hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the Applicant has not established that her spouse would suffer extreme hardship if the Applicant cannot remain in the United States. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Although we are not insensitive to the qualifying relative's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Having found the Applicant statutorily ineligible for relief, no purpose would be served in discussing 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.

Cite as *Matter of P-A-S-P-*, ID# 14778 (AAO Dec. 30, 2015)