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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JUN 2 4 2013 Office: LOS ANGELES, CA [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The record establishes that 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 having attempted to procure a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, the applicant attempted to procure entry to the United Sates in 1999 by presenting a fraudulent border crossing card. On December 13, 1999, the applicant was expeditiously removed from the United States. Shortly thereafter, the applicant entered the United States without being admitted and has remained in the United States to date. 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 children.

The field office director found that based on the applicant's entry to the United States after being removed from the United States, she was inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). The field office director further noted that because the applicant was a VAWA (Violence Against Women Act) self-petitioner, she was eligible to file for a waiver of inadmissibility pursuant to section 212(a)(9)(C)(iii) of the Act. The field office director concluded that the applicant had failed to establish a substantial connection because the battery or extreme cruelty and her removal or departure from the United States, or reentry into the United States, or attempted reentry into the United States. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director,* dated April 3, 2012.

Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous

territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver - The Secretary of Homeland Security may waive the application if clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between-

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

As noted above, a waiver of section 212(a)(9)(C)(i) inadmissibility is available to individuals classified as battered spouses under section 204(a)(1)(A)(iii) of the Act. As outlined above, a Form I-360 Petition for Amerasian, Widow or Special Immigrant as a self-petitioning battered spouse of a United States citizen under the Violence Against Women Act was approved in December 2010. The Form I-360 application included detailed evidence regarding the battering or extreme cruelty experienced by the applicant by her U.S. citizen spouse; a supporting statement from the applicant's sister, a witness to the abuse suffered by the applicant; and a letter establishing that the applicant was receiving psychiatric and psychological services for Major Depression stemming from her history of domestic violence at the hands of her husband. In addition, a letter has been provided by the applicant connecting the battering or extreme cruelty to her attempted entry which led to her removal, and her subsequent entry to the United States without being admitted. As the applicant states,

We were married on October 29, 1999 and two months later my mom became ill and died. That is when I had to leave to Mexico. I had to leave to Mexico, and afterwards I did not want to return, but I had to because of his threats. I did it especially for my children because I wanted to be with them and I could not leave them with that person so that he would mistreat them and who would not have anyone to defend them.

After I arrived, I unfortunately had to return to live with him, and we lived together for several years. I thought about putting a stop to all of this, he continued with the mistreatment, physical, mental, and sexual abuse. He did not change at all. Even now I think about how I could have put an end to it all and reported the abuse that he subjected me and my children to, but he threatened me often, he threatened to kill me, to beat me and to take away my children if I left him. I never did it because I was afraid....

Letter and Translation from

Based on the evidence referenced above, the AAO finds a connection between the alien's subjection to battering or extreme cruelty and her attempted reentry to the United States in 1999, which led to her removal, and the applicant's subsequent entry to the United States without being admitted in

1999. As noted by the applicant, her attempt to enter the United States by fraud or willful misrepresentation, her removal, and her re-entry to the United States without authorization shortly thereafter, were all related to her desire to return to the United States due to threats received by her abusive husband and to ensure her children's safety and well-being in the hands of the applicant's spouse. Accordingly, the applicant is eligible for a waiver of inadmissibility under section 212(a)(9)(C)(iii) of the Act.

Regarding the applicant's additional ground of inadmissibility for fraud or willful misrepresentation, 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:

> (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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

As correctly noted by the field office director, the applicant filed her I-360 petition as the battered spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child. Accordingly, as the beneficiary of an approved I-360, the applicant must demonstrate extreme hardship to herself or to her United States citizen children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 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 v. INS*, 138 F.3d 1292, 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 the applicant or her children.

The applicant asserts that she will experience extreme hardship if she is not granted a waiver of inadmissibility. To begin, declarations have been provided from the applicant detailing the abuse she experienced, physical and emotional, as a result of her relationship with her husband. Additionally, the applicant details the fears she has were her children to remain in the United States

without her, as she is the sole caregiver and provider to the children and has provided them with love and stability in light of the applicant's husband's abuse and threats. In support, a letter has been provided by states that the applicant is receiving psychiatric and psychological treatment, including medications and therapy, for depression stemming primarily from her domestic violence history. details that the applicant is making good progress but she is currently raising two children by herself and she is their sole support. notes that were the applicant to relocate abroad, such a predicament would cause the applicant and her two children extreme stress and likely undo the progress that the family has made since escaping a violent home. In conclusion, maintains that any disruption in her presence at work, home or therapy would be detrimental. *See Letter from* dated January 26, 2011. The record also contains evidence of the presence of her two U.S. citizen children in the United States. Further, the record establishes the applicant's extensive family ties in the United States, including the presence of multiple siblings and their families. Moreover, the record establishes that the applicant has been residing in the United States for almost two decades. Finally, the AAO notes that a travel warning has been issued for Mexico, the applicant's birth place, due to the high rates of crime and violence. *See Travel Warning-Mexico, U.S. Department of State,* dated November 20, 2012.

The record establishes that the applicant has been residing in the United Sates for almost two decades and has no current ties to Mexico. Were she to relocate abroad, the applicant would have to leave her children, her extended family, her friends, her community and the mental health professionals familiar with her medical history and treatment plan. She would also be concerned about her safety and well-being in Mexico. As for the applicant's U.S. citizen children, the record establishes that they are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate them to Mexico, a county with which they are not familiar, would constitute extreme hardship to them, and by extension, to the applicant. Alternatively, to leave them alone in the United States while their mother relocates abroad, in light of what they witnessed with respect to their mother's abuse by her husband and their dependence on her as their sole caregiver and provider, would constitute extreme hardship. It has thus been established that the applicant spouse would suffer extreme hardship were she denied a waiver of inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that she and her children would suffer extreme hardship were she unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant and her children and siblings would face if the applicant were to relocate to Mexico, regardless of whether they accompanied the applicant or stayed in the United States; support letters; periods of gainful employment; community ties; certificates issued to the applicant for participation in parent education classes; the payment of taxes; the apparent lack of a criminal record; and the passage of more than ten years since the applicant's fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation, as outlined above, her removal, her re-entry to the United States without authorization and periods of unlawful presence and employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.