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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

H5

[redacted]

Date: JUL 25 2011 Office: ST. PAUL, MINNESOTA FILE: [redacted]

IN RE: Applicant: [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 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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

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 misrepresenting his intentions for applying for admission into the United States. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). 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 his United States citizen wife.

In a decision dated December 13, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated December 13, 2010.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserts that the qualifying relative will suffer emotional and financial hardships in the event she is separated from the applicant. Further, the applicant's attorney indicated that the applicant and qualifying spouse are currently trying to adopt a baby and that they will not be able to adopt if either the applicant and/or the qualifying spouse relocates to Mexico. The applicant's attorney also addressed the qualifying spouse's close family ties to the United States, her inability to speak Spanish, her loss of career, financial difficulties and safety concerns as hardships that the qualifying spouse would face upon relocation to Mexico. Moreover, the applicant's attorney asserted that the qualifying spouse has lived her entire life in the United States.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief from the applicant's attorney, an affidavit from the qualifying spouse, documentation regarding the qualifying spouse's career, documents regarding the applicant and qualifying spouse's plans for adoption, financial documentation, country condition materials, letters from the applicant and qualifying spouse, and documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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:

> 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 an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's wife 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-Moralez,* 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 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 applicant's qualifying relative is his wife, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an appeal brief from the applicant's attorney, an affidavit from the qualifying spouse, documentation regarding the qualifying spouse's career, documents regarding the applicant and qualifying spouse's plans for adoption, financial documentation, country condition materials, letters from the applicant and qualifying spouse, and other documentation submitted in conjunction with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant's attorney asserts that the qualifying relative will suffer emotional and financial hardships in the event she is separated from the applicant. Further, the applicant's attorney indicated that the applicant and qualifying spouse are currently trying to adopt a baby and they will not be able to adopt if either the applicant and/or the qualifying spouse relocates to Mexico. The applicant's attorney also addressed the qualifying spouse's close family ties to the United States, her inability to speak Spanish, her loss of career, financial difficulties, and safety concerns as hardships that the qualifying spouse would face upon relocation to Mexico.

The AAO finds that the applicant has established that his wife will suffer extreme hardship as a consequence of being separated from him. With regard to the emotional hardships, the record contains letters from the qualifying spouse and the applicant, an affidavit from the qualifying spouse and documentation regarding their plans to adopt a baby, including a receipt confirming their financial investment into adopting and information regarding the age limits for adoptive parents. In her affidavit, the qualifying spouse describes her attempts at having children and the efforts that she

and the applicant have put into adoption, including the time and financial contributions that they have made towards the process. The qualifying spouse states that "this is our only chance to start a family" and that if her husband returns to Mexico their "dreams of starting a family will die" because they are both nearing the maximum age limits for most adoption agencies. Further, the applicant's attorney asserts that, if the applicant returns to Mexico, the qualifying spouse will face financial hardships. The record contains documentation regarding the qualifying spouse's income, assets and expenses. However, the record contains no evidence regarding the current financial contributions made by the applicant. Nonetheless, in light of the qualifying spouse's emotional hardship and efforts to adopt a child with the applicant, the hardship facing the qualifying spouse in the United States without the presence of the applicant rises to the level of extreme.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Mexico. The qualifying spouse has lived in the United States for her entire life and her entire family, including her parents, siblings and grandmother, lives in the United States. The record contains an affidavit and letter from the qualifying spouse describing the close nature and extent of her relationship with her family in the United States. Further, the applicant's attorney and the qualifying spouse both also indicate that the qualifying spouse does not speak Spanish and will have difficulty adjusting to life in Mexico. In addition, the applicant's attorney asserts that the qualifying spouse will lose her current employment and the career that she has worked towards with little education. The record contains documentation regarding the qualifying spouse's position, including letters from her employer, performance reviews, a job description and her salary and benefits. The record confirms that she has been employed by the same company for eight years and has worked her way up through the company and is now an area manager. The applicant's attorney also indicates that the qualifying spouse would face safety and financial hardships upon relocation to Mexico. The record contains country condition materials supporting these assertions, as well as letters from the applicant and qualifying spouse. Moreover, as aforementioned, the applicant's attorney contends that the qualifying spouse and applicant are in the process of adopting a child and they will not be able to continue this process if they relocate to Mexico and will lose the money and time they have already invested into adopting. The record contains documentation regarding the steps that the qualifying spouse and applicant have taken towards adoption. The AAO concludes the qualifying spouse would experience extreme hardship if she relocated to Mexico to accompany the applicant, due to her length of residence in the United States, her family ties to the United States, her inability to speak Spanish, her loss of career, safety concerns and financial difficulties in Mexico.

Considered in the aggregate, the applicant has established that his qualifying spouse would face extreme hardship if the applicant's waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(i) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the qualifying spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, and his apparent lack of a criminal record. The unfavorable factors in this matter are the misrepresentations made by the applicant in order to enter the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.