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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

[redacted]

DATE: AUG 20 2012 Office: PHOENIX, AZ 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 attempting to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant does not contest the finding of inadmissibility. The applicant's spouse and parents are lawful permanent residents and his four children are U.S. citizens. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his family.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated June 23, 2010.

On appeal, counsel asserts that the field office director erred in finding that the applicant's spouse would not suffer extreme hardship due to separation from the applicant or relocation to Mexico. *Form I-290B*, received July 21, 2010.

The record includes, but is not limited to, statements from the applicant and his family members and friends, education records, medical records and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to procure admission to the United States on October 12, 1988 using a Mexican passport that did not belong to him. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by willful misrepresentation of a material fact.

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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse, father or mother. 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*, 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.

Counsel states that the applicant's spouse's family legally resides in the United States; her and the applicant's second child has asthma; their third child has been diagnosed with depression; their last child has behavioral issues in school; the applicant may not be able to find a job in Mexico as he has lived in the United States for over 20 years and has no connections in Mexico; and the children would miss out on educational opportunities in the United States and health insurance from the applicant's employment.

The applicant states that Mexico is going through a lot of violent issues; he and his children are afraid to live there; his parents have a small two-bedroom house in Mexico that is occupied by five people; his family would not fit in their house; and it will be hard for him to find a new job in Mexico.

The applicant's spouse states that she cannot go to Mexico as her children are used to living in the United States and the sudden change will affect them emotionally; she wants the best education for her children; school life expectancy is lower in Mexico than in the United States; the poverty level is extreme in Mexico; she would fear for her children's safety; and the high crime rate and kidnappings in Mexico create anxiety for her.

The applicant's children detail the safety issues and lack of educational opportunities in Mexico. The record reflects that the applicant's children are 14, 15, 16 and 23 years-old. The record reflects that the second child has asthma. The third child's assistant principal details her academic success. The youngest child's teacher details some behavioral issues in class. The record includes numerous academic certificates for the applicant's children.

The record reflects that the applicant's spouse would be relocating to Mexico with three teenage children, one who has asthma and one who has behavioral issues. The record does not include documentation reflecting that her daughter has depression. The record reflects that they are integrated into the American lifestyle and would be losing educational opportunities. The AAO

notes that there is a travel warning for Mexico, dated February 8, 2012, detailing safety issues throughout Mexico and that her children are fearful of living there. Although it is not clear which city the applicant's family would live in, the applicant's spouse's claim that she would have anxiety based on fear for her children's safety is plausible. The applicant's claim that he would be unable to find employment is plausible, especially in light of his lengthy period of time out of Mexico. When these hardship factors and the normal results of relocation are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship upon relocation to Mexico.

Counsel states that that the applicant's spouse has never worked outside of the home; she cares for her and the applicant's three minor children and she would be affected by their hardship; she would be affected emotionally; she may have to support the applicant in Mexico until he finds a job; and she would be responsible for the home mortgage, and her son's college tuition and all of the family's general needs.

The applicant states that his children need his emotional and financial support; he pays for the home mortgage, vehicles, bills and food; and he is close with his family.

The applicant's spouse states that her third child is going through depression due to the applicant's case; her youngest child is having behavioral problems; she does not think she would be able to handle them by herself; she has lived with the applicant for over 21 years; she and her children are feeling very depressed; the house payment is $1,100, utilities are $450 and car payments are $900; and she went to the hospital due to being affected emotionally by the waiver denial.

The record includes an employer letter for the applicant and his 2008 tax return reflects an income of over $66,000. The record includes several bills for the applicant's family including a mortgage statement and a college tuition bill. The record reflects that the applicant's spouse sought emergency medical services, but it is not clear what her medical issue was.

The applicant's children detail their closeness to the applicant and his role in their lives. The record includes several letters detailing the applicant's significant role in his family's life.

The record reflects that the applicant and his spouse have been married for over 20 years. The record reflects that the applicant is the primary source of financial support for his spouse and children and that his spouse does not work. The record includes numerous financial obligations including a mortgage. In addition, his spouse would be raising their four children alone and the applicant plays a significant role in his family's life. The record reflects that one child has asthma and one has behavioral issues, but there is no documentation that their daughter has depression. However, considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States.

As the AAO has found extreme hardship to the applicant's spouse, it will not make a determination in regard to the hardships to his parents.

In *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

> In evaluating whether section 212(h)(1)(B) 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).

Id. at 301.

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 adverse factors in the present case are the applicant's misrepresentation, entry without inspection, unauthorized period of stay and unauthorized employment.

The favorable factors are the applicant's U.S. citizen children, lawful permanent resident spouse and parents, the extreme hardship to his spouse and the absence of a criminal record.

The AAO finds that the immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

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