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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: JUL 31 2012 OFFICE: MILWAUKEE, WI 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, Milwaukee, Wisconsin, and 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 has resided in the United States since March 16, 2003, when she was admitted pursuant to a B-1/B-2 nonimmigrant visa. She 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 having procured that visa through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. 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 spouse and children.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated April 29, 2010.

On appeal, counsel for the applicant contends the applicant's spouse would experience extreme hardship upon separation from the applicant due to his familial responsibilities, financial and psychological difficulties, and medical issues. Counsel asserts that the applicant's spouse would also face extreme hardship upon relocation to Mexico because of the inadequate health care, dangerous country conditions, lack of employment prospects, and separation from family in the United States.

The record includes, but is not limited to, statements from the applicant's spouse, letters from family, friends, educators, and members of the community, medical, financial, and educational records, evidence of birth, marriage, residence, and citizenship, articles on medical issues and country conditions, and other applications and petitions filed on the applicant's behalf. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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:

> (1) 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.

In the present case, the applicant admitted under oath that when applying for a nonimmigrant visa in 1999 she informed consular officers that she was not married and did not have any children when in fact she was married to a lawful permanent resident and had given birth to a U.S. Citizen child in 1998.[1] Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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*

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[1] The AAO notes that the applicant's husband was a lawful permanent resident at the time the applicant applied for a nonimmigrant visa in 1999, and became a naturalized U.S. Citizen on May 21, 2009.

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 spouse contends he would experience financial hardship if the applicant lived in Mexico without him, because he does not earn enough money to support two households with two adults and three children. Counsel submits employment letters from [redacted] nursery, where he is employed as a seasonal worker, as well as explanations of unemployment benefits as evidence of the spouse's income. Copies of household bills are submitted to demonstrate expenses. The applicant also indicates that due to his medical conditions, which include hypertension, gout, joint swelling, and dizziness, he needs the applicant present to minimize stress, make sure he is eating a healthy diet, and help him with medications. A letter from the spouse's doctor is submitted, confirming he is on blood pressure medication, that his hypertension is a permanent condition, and that he needs to adhere to a low-fat, low-salt diet. The applicant's spouse adds that the applicant takes care of the children's diet and health as well, which requires significant work because their son [redacted] has issues with obesity and hypertension, and has been resistant to changing his diet and exercise levels. Letters from [redacted] physician and medical records are submitted in support. The applicant's spouse explains that hypertension runs in the family, and two of his siblings have suffered from strokes. The spouse's brother's social worker states that the stroke has affected the brother's ability to communicate and understand, and that once he is discharged from the nursing

facility he will need assistance with things including personal care, meals, shopping, and housing. The social worker adds that the brother, [redacted] is planning to live with the applicant and her spouse so the applicant can help care for [redacted] while her spouse works. A letter from the spouse's sister's physician confirms that the sister, [redacted], also suffered from a stroke in April 2008, is consequently unable to speak, and is paralyzed on her right side. A licensed psychologist opines that the applicant's spouse has an adjustment disorder with depression due to the stress of his life and the applicant's immigration situation.

Counsel asserts that the applicant and her spouse would be unable to find adequate employment in Mexico given their skill set and age. An article on age discrimination in Mexico is submitted in support. Counsel adds that health care in Mexico is inadequate for the spouse's and children's needs, and that drugs found in Mexico are unreliable. Articles on medical care in Mexico are submitted in support. The applicant's spouse explains he does not want to relocate himself and his children to Piedras Negras, Mexico, where the applicant's parents currently live, due to the violence caused by the Los Zetas paramilitary organization located there. He indicates that he does not want to leave his mother and siblings in the United States, and that he would find it very difficult to leave his brother, [redacted] who will stay with him once [redacted] is discharged from the nursing facility. The spouse states that he has lived in the United States since he was 16 years old, and that he does not want to take his three children out of school to relocate to Mexico.

The applicant's spouse has shown that he experiences financial hardship in the United States. The record reflects that the spouse earned $14,835 in 2009 working for [redacted] This amounts to less than 100% of the minimum income requirement for a family of five according to HHS poverty guidelines. *See Form I-864P, 2012 HHS Poverty Guidelines for Affidavit of Support,* March 1, 2012. Furthermore, the record contains evidence showing that the applicant's spouse has been the beneficiary of unemployment benefits from Wisconsin, and that his monthly expenses exceed his income. The applicant's spouse has moreover submitted sufficient evidence to show that he and his son [redacted] have some medical difficulties which require medication and dietary assistance. The record also indicates that the spouse's two siblings have suffered from strokes. Evidence shows that the spouse's brother needs significant assistance with daily tasks due to his stroke. The record indicates that these needs will be met by the applicant, who stays at home and also takes care of her three children.

The AAO therefore finds there is sufficient evidence of record to demonstrate that the spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without her spouse.

The applicant's spouse has also demonstrated he will experience extreme hardship upon relocation to Mexico. The spouse has shown that he has significant family ties and a stable work history in the United States. Moreover, the spouse's responsibility towards his brother Luis, who suffered

from a stroke and consequently needs assistance, add to the difficulties involved in relocation to Mexico. The record also contains some evidence demonstrating that given the spouse's skill set and age, finding adequate employment to support a family of five in Mexico may be challenging. The AAO notes that the spouse's fear of dangerous country conditions in Piedras Negras, Coahuila, Mexico, is corroborated by the U.S. Department of State, which indicates:

> You should defer non-essential travel to the state of Coahuila. The State of Coahuila continues to experience high rates of violent crimes and narcotics-related murders. TCOs continue to compete for territory and coveted border crossings to the United States. In August 2011, suspected members of TCOs and police exchange fire near a crowded soccer stadium in Torreón causing panic. The city of Torreón had a murder rate of more than 40 per 100,000 population between January and August of 2011.

Travel Warning: Mexico, U.S. Department of State, February 8, 2012. In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

Considered in the aggregate, the applicant has established that the applicant's 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.

The unfavorable factors include the applicant's misrepresentation to consular officials, and her period of stay in the United States without status. The favorable factors include the extreme hardship to her spouse, family ties in the United States, and lack of criminal history.

Although the applicant's violations of immigration law 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.