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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]

H5

Date: MAY 23 2012 Office: PORTLAND, OREGON 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]

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, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the mother of a U.S. citizen child, a lawful permanent resident child, and two U.S. citizen stepchildren. She is the beneficiary of an approved 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 reside in the United States with her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated January 27, 2010.

On appeal, the applicant, through previous counsel, asserts that the Form I-601 was not required as the applicant did not make a material misrepresentation. *See counsel's appeal brief,* dated March 2, 2010. However, in the event that the Form I-601 is required, the applicant has shown that her husband will suffer extreme hardship if she is removed from the United States. *See id.*

The record includes, but is not limited to, previous counsel's appeal brief and brief in support of the Form I-601, a statement from current counsel, statements from the applicant and her husband, letters of support, mental health documents for the applicant's husband, financial documents, employment documents for the applicant's husband, school records for the applicant's son, an article on the effects of single parent households on children, and country-conditions documents on Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (i) In general.-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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (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 immigrant 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...

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 of Immigration Appeals (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.

In the present case, the record indicates that the applicant entered the United States on numerous occasions using a border crossing card (BCC). During a sworn statement given on November 24, 2009, the applicant admitted to misrepresenting her employment on two or three occasions when entering the United States. She stated that during an entry in August 2005, she "lied" to the immigration officer by stating she was employed in Mexico, when in fact, she was not.

In her appeal brief, previous counsel claims that the "question is not whether [the applicant] made a misrepresentation," but "whether that misrepresentation was material." Previous counsel states that the applicant "presented a falsified letter from her employer stating that she was still employed with them when in fact she was not." Previous counsel claims that the false employment letter "did not tend to shut off a line of inquiry relevant to [the applicant's] eligibility," as she already had her visa and was still eligible for it. The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board, a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *9 FAM 40.63 N61*; *see also Matter of S- and B-C-*, *supra*. In this case, the applicant stated she misrepresented her employment status so that the immigration officer would give her a permit to enter the United States, and she claimed that she had to lie in order to come to the United States. The AAO finds that the applicant willfully misrepresented a material fact when she presented a falsified employment letter and claimed that she was employed in Mexico in order to enter the United States. Had the applicant mentioned that she was no longer employed in Mexico, her entry may have been denied based on the possibility that the applicant was an intending immigrant because she lacked ties to Mexico relevant to a determination of the applicant's nonimmigrant intent. Therefore, the AAO finds the applicant's misrepresentation about her employment is a material misrepresentation, and she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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, her children, and her stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 United States Citizenship and Immigration Services

(USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's children and stepchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children and stepchildren will not be separately considered, except as it may affect the applicant's spouse.

Previous counsel states the applicant's husband has resided in the United States for many years, he has no family ties to Mexico, most of his siblings reside in the United States, and the applicant and her husband do not know how they will support themselves in Mexico. Previous counsel also states the applicant's husband has two children in the United States from a previous relationship, he has a healthy relationship with them, and he provides financial support for his son. She claims that if the applicant's husband joins the applicant in Mexico, "his relationship with his older children would suffer." Additionally, she states the applicant worries about the stress of moving to Mexico on her children. In a statement dated September 2009, the applicant states her son will not have the same educational opportunities in Mexico that he has in the United States. Previous counsel also states the biological fathers of the applicant's children reside in the applicant's hometown and she worries about having difficulties with them. The applicant states her son considers her husband to be his father, and she claims that her son will suffer if he is separated from him.

Previous counsel states the applicant's husband would suffer a financial hardship in Mexico. She claims that the applicant's husband will be unable to provide financial support for his son if he moves to Mexico. The record shows that the applicant's husband sends his ex-wife child support. Previous counsel states that if the applicant's husband were to find a job in Mexico, he might make "between $4-$5 USD a day," compared to "about $159 USD a day" that he makes with his current employer. In a letter dated October 5, 2009, [redacted] states the applicant's husband has been employed with his company since 1980, "[h]e is a very important and reliable part of [their] farming and packing operation," and the company provides health insurance for his family. Previous counsel states the applicant's husband suffered from high blood pressure and cholesterol in the past, but he is currently on medication. The AAO notes that no medical documentation has been submitted establishing that the applicant's husband suffers from any medical conditions. Previous counsel states the applicant's husband's health insurance helps to pay for his health-related expenses, but in Mexico, he would have no health insurance and have to pay for his medication and treatment out of pocket.

The applicant states her children would be in danger in Mexico. In a statement dated September 2009, the applicant's husband states Mexico "is terribly unsafe right now." Previous counsel states the "[c]urrent country conditions in Mexico are unstable and frightening," and in the applicant's husband's home state there is crime and violence. In a statement dated March 23, 2012, current counsel states "the city where [the applicant] is from is experiencing widespread violent crime." Previous counsel claims that the applicant "worries that they...would be targeted if they returned to Mexico." Previous and current counsel submitted numerous articles, reports, and statements regarding conditions in Mexico, especially

in the areas where the applicant and her family would likely reside. Additionally, the AAO notes that on February 8, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning states U.S. citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery." The warning also states that the rise in "kidnappings and disappearances throughout Mexico is of particular concern."

The AAO acknowledges that the applicant's husband is a citizen of the United States and that he has been residing in the United States for many years. Based on the record as a whole, including his safety concerns in Mexico; his minimal ties to Mexico; his separation from his family in the United States, including his two U.S. citizen children; having to raise his daughter and stepson in Mexico; having to leave his employment in the United States, his medical issues and possible disruption of his treatment; and lack of health insurance in Mexico; the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Mexico.

Previous counsel states that if the applicant's children remain in the United States without the applicant, "it would have a terrible impact [on] the children's emotional development." In a mental health evaluation dated November 17, 2009, licensed social worker [redacted] reports that the applicant's children would suffer without the applicant's "daily care and love." Additionally, previous counsel states the applicant's husband would suffer financially in the United States because he would have to pay for childcare or "cut back on his hours" to stay with the children. She states that the applicant's husband relies on the applicant to care for the children and home, and the applicant's husband does not believe he could "take proper care of the children alone." Further, [redacted] states that since the applicant's husband is not the biological father of the applicant's children, "implications of custody and guardianship would present themselves."

Previous counsel states that if the children join the applicant in Mexico, it would be "extremely difficult for" the applicant's husband. As noted above, the applicant's children look to the applicant's husband as a father figure, since neither of their biological fathers are in their lives. The applicant's husband states his children "would suffer morally and psychologically." Additionally, [redacted] indicates that the applicant's family "greatly depends on one another for emotional support." She concludes that without the applicant and her children in his life, the applicant's husband "would likely grow depressed," as he is already demonstrating "a fair amount of sadness and anxiety." The applicant states her husband would have to stay in the United States to work. Previous counsel states the applicant's husband would have to send money to Mexico, as the applicant would be unable to find employment.

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically his financial and mental health issues, the record establishes that the applicant's husband would face extreme hardship if he remained in the United States in her absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

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 AAO notes that *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board. In *Matter of Mendez-Moralez*, the Board assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board 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 Board further states 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(h)(1)(B) 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 adverse factors in the present case include the applicant's misrepresentations and her unlawful presence. The favorable and mitigating factors are the applicant's United States citizen husband and children; the extreme hardship to her husband if she were refused admission; the absence of a criminal record; and her good moral character as described in several letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In these proceedings, the burden of proving eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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