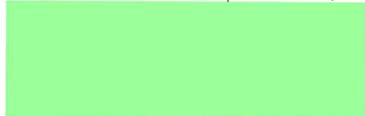




**U.S. Citizenship
and Immigration
Services**

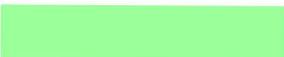
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DATE: **APR 17 2013** OFFICE: BALTIMORE, MD

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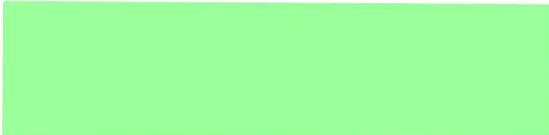
IN RE:

APPLICANT: 

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:



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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 1995, when she entered without inspection. 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 attempted to procure admission to the United States through fraud or misrepresentation in 1990. 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 lawful permanent resident spouse and children.

The District Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated August 16, 2012.

On appeal, counsel contends in a brief that the applicant thought she used a valid passport and visa when she attempted to procure admission in 1990. Counsel moreover contends that the applicant's spouse would experience emotional and family-related hardship without the applicant present, and that he would also experience extreme hardship upon relocation to El Salvador.

The record includes, but is not limited to, briefs in support, a statement from the applicant, a U. S. Department of State human rights report for El Salvador, other applications and petitions, and evidence of birth, marriage, residence, and citizenship. 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 record reflects that on October 24, 1990 the applicant attempted to use a fraudulent visa to procure admission into the United States. The applicant claims that she paid a business in San Salvador \$500 to obtain a passport and a visa for her, and she verified upon receipt that the documents were legally obtained and proper. She further states that when she was informed by immigration officials that the documents were fraudulent, she was in shock. Counsel contends that the applicant believed her visa was valid, and that she had no intent to enter the United States with an invalid visa.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In the present case, the applicant has failed to meet her burden of demonstrating that she did not know the visa she presented was fraudulent. The applicant does not present any evidence demonstrating whether she filled out any appropriate forms in order to obtain her passport from the Salvadorean government, or that she completed and signed any U.S. visa application documents. Furthermore, the applicant fails to submit any other corroborative evidence establishing she objectively believed she obtained her passport and visa legitimately. Given the lack of supporting evidence, the AAO finds that the applicant has not established that she did not know that she was paying for a fraudulent visa.

The AAO therefore finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her lawful permanent resident 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 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. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contends that the applicant's spouse lacks ties to El Salvador, and that the adverse country conditions, which include threats to civil liberties, gang violence, police corruption, lack of adequate housing and health care, as well as the absence of employment opportunities, would create extreme hardship for the spouse should he relocate to El Salvador. Counsel submits a 2008 U.S. Department of State Human Rights Report in support.

Counsel moreover states that the applicant's spouse would experience emotional and psychological difficulties upon separation from the applicant. Counsel states that a psychological evaluation indicates the spouse suffers from emotional distress, depression, and has failing help. Counsel concludes that the applicant's spouse would experience extreme hardship if separated from the applicant.

The record establishes that the applicant and her spouse have been married since 1974. The applicant's spouse is over 60 years old, and they have three children together. In addition, the record indicates that the applicant's spouse suffers from some emotional issues in light of possible separation from his spouse of over 39 years. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse. Thus, based on a thorough review of the record, and in particular considering the length of the marriage between the applicant and his spouse and the additional emotional hardship separation brings about, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship.

Furthermore, the applicant has also demonstrated that her spouse would experience extreme hardship upon relocation to El Salvador. The AAO notes that the spouse is a native and citizen of El Salvador. The record additionally reflects that the applicant's spouse was granted temporary protected status (TPS) five times, from 2002 until 2009. The Secretary of Homeland Security (Secretary) has extended the designation of El Salvador for TPS through September 9, 2013. The Secretary has determined that an extension is warranted because the conditions in El Salvador that prompted the TPS designation continue to be met. There continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador remains unable, temporarily, to handle adequately the return of its nationals. Given these living conditions, in addition to the adverse country conditions as described by the U.S. Department of State in its recent travel warning, the AAO concludes that the applicant's spouse, who is over 60 years old, would experience extreme hardship upon relocation to El Salvador.

Considered in the aggregate, the applicant has established that her lawful permanent resident 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-Morales*, 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 adverse factors include the applicant's misrepresentation, her subsequent entry without inspection, and her employment without authorization in the United States. The favorable factors include the extreme hardship to her lawful permanent resident spouse, and her lack of a criminal

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record.

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.