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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 19 2013 OFFICE: LOS ANGELES FILE:

IN RE:

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:

SELF-REPRESENTED

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California 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 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 entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative who seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and also be denied the application based upon discretion. *See Decision of the Field Office Director*, dated August 12, 2010.

On appeal, the applicant asserts that his spouse would experience extreme financial, emotional and medical hardship if they were separated. The applicant further asserts that his spouse cannot relocate to Mexico because she would leave behind her medical care and family ties in the United States to face safety and financial concerns in Mexico.

In support of the waiver application and appeal, the applicant submitted letters from himself, letters from his spouse, letters from his children, family photographs, identity documents, legal documents, financial documentation, medical documentation concerning the applicant, medical documentation concerning the applicant' spouse, and medical documentation concerning the applicant's son. 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 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 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 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…

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form 1-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

The applicant attempted to enter the United States pursuant to a false claim to U.S. citizenship in on September 1, 1984 at a port of entry. The applicant was subsequently ordered deported and excluded on October 4, 1984. Accordingly, the applicant 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 entry to the United States by fraud or willful misrepresentation. The applicant does not dispute the applicability of this ground of inadmissibility on appeal.

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 bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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.

The record reflects that the applicant is a 58-year-old native and citizen of Mexico. The applicant's spouse is a 61-year-old native of Mexico and citizen of the United States. The applicant is currently residing with his spouse in Los Angeles, California.

The applicant's spouse asserts that she has been married to the applicant for over 34 years and that she would feel as if she lost a limb if she were separated from the applicant. The applicant's spouse contends that she has been very worried and depressed about the applicant's immigration status. The applicant's children both state that they have noted that the applicant's spouse has been very depressed lately.

The applicant's spouse asserts that she suffers from rheumatoid arthritis and cysts so the applicant takes her to medical appointments and cares for her when she is not well. The record contains medical documentation concerning the applicant's spouse stating that she was not diagnosed with rheumatoid arthritis, but suffers from mild degenerative joint disease of the knee and ankles. The medical notes indicate that the applicant's spouse's symptoms worsen after a day of working in a Laundromat. Medical documents in the record also indicate that in 2010, the applicant's spouse visited the hospital for hypertension, rotator cuff syndrome, diabetes mellitus II, hypercholesterolemia, brachial neuritis, and adhesive capsulitis and osteoarthritis in her shoulder.

The applicant's daughter asserts that the applicant's spouse can only work part-time due to her medical conditions. The applicant's spouse contends that she would financially suffer without the applicant because she makes very little money and is unable to work long hours. It is noted that the most recent W-2 in the record for the applicant's spouse, from 2009, indicates income in the amount of $8,420. The applicant indicates that he is currently on disability due to medical issues. In the aggregate, there is sufficient evidence in the record to find that the applicant's spouse would suffer from a level of hardship beyond the common results of separation from a spouse.

The applicant asserts that his spouse is a U.S. citizen who has resided in the United States for over 35 years. It is noted that the applicant's spouse is a native of Mexico. The applicant contends that the applicant's spouse has ties in the United States that she would leave behind if she relocated to Mexico. The record reflects that the applicant and his spouse have two adult U.S. citizen children and currently assist in caring for their grandchildren. Letters of support from the applicant's spouse's two children state that their family is very close and frequently gather at their parents' home. The record also contains a letter from a church acknowledging that the applicant's spouse has been an active parishioner since 1992. It is noted that the applicant's spouse's employer submitted a letter dated March 8, 2010 stating that she has been working for the same company for, at that time, nearly seven years. The record indicates that the applicant's spouse still works in the same position. The applicant also submitted legal documents indicating that the applicant and his spouse own property in the United States.

The applicant asserts that his spouse needs medical care in the United States and there are financial and safety concerns in Mexico. As noted, the applicant's spouse has been diagnosed with several physical ailments and the record indicates very regular clinic visits by the applicant's spouse in the year 2010. The record contains medical documentation concerning the applicant's spouse's arthritis dating back to 2005, indicating the continuity of care for her

affliction in the United States. The applicant also asserts that both he and his spouse suffer from physical ailments that would greatly impede their ability to seek employment in Mexico. It is noted that the applicant does not indicate where in Mexico he would relocate if his application were denied, but the applicant originates from the state of Sinaloa and the applicant's spouse from Jalisco. According to the U.S. Department of State, there is a limited travel warning dated November 20, 2012 in effect for both of these Mexican states. Specifically, non-essential travel to Sinaloa should be deferred, except the city of Mazatlan, where you should exercise caution particularly late at night and in the early morning. For Jalisco, non-essential travel should be deferred to areas bordering Michoacán and Zacatecas and caution should be exercised at night outside the city. In this case, the record contains sufficient evidence to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to Mexico.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if her 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 her 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 of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, 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 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 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 favorable factors include the extreme hardship the applicant's spouse would experience whether she remained in the United States, separated from the applicant, or accompanied the applicant in Mexico, as well as hardship to the applicant's U.S. citizen children and siblings, and the fact that it is has been over 25 years since the applicant's last criminal contact. The unfavorable factors in this matter include the applicant's conviction for carrying a concealed weapon in 1987, evidence that he may be using drugs, and his immigration violations.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors such that a favorable exercise of discretion is warranted. 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. The waiver application is approved.