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

(b)(6)

U.S. Citizenship and Immigration Services

Date: SEP 30 2014 Office: TUCSON FILE:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Mexico, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* August 1, 2013.

On appeal, the applicant contends that U.S. Citizenship and Immigration Services (USCIS) was incorrect in concluding that his qualifying relative would not suffer extreme hardship if he is not allowed to remain in the United States.

The record includes, but is not limited to, the following documentation: a statement by the applicant on the Form I-290B, Notice of Appeal or Motion; statements from the applicant, the applicant's spouse, the applicant's mother-in-law, and the applicant's brother; financial documentation; and medical documentation for the applicant's spouse, mother-in-law, and niece. 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.

The record indicates that the applicant was issued a Border Crossing Card (BCC) on March 20, 2009. To receive a BCC, the law requires the alien to have a residence abroad that he or she does not intend to abandon. The applicant has a U.S. citizen son. The applicant entered the United States on November 16, 2010 using his border crossing card. The record indicates that the applicant completed his medical examination in September 2010, which was prior to his entry on November 16, 2010, indicating his intent to immigrate to the United States, and filed his Application to Register Permanent Residence or Adjust Status (Form I-485) on November 22, 2010, less than one week after he was admitted as a nonimmigrant visitor . During an interview with a USCIS officer on February 17, 2011, the applicant stated that he entered the United States on November 11, 2010 to file immigration papers for adjustment of status, but told the immigration inspector that he was entering for a visit. The applicant was again interviewed by a

USCIS officer on May 11, 2012. The record indicates that during this second interview, the applicant provided no responses to questions regarding the circumstances surrounding his entry to the United States on November 16, 2010. The USCIS officer determined that the applicant made a willful misrepresentation in his responses to U.S. immigration officials in order to gain admission to the United States. The applicant does not contest his inadmissibility.

Section 212(i) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of the Department of Homeland Security (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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. INS*, 138 F.3d 1292, 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 indicates that the applicant's spouse has several medical conditions. Medical documentation in the record indicates that she suffers from hyperlipidemia, insomnia and fatigue, has experienced a mass on her breast, and musculoskeletal pain in her right knee and right elbow.

In addition, medical documentation in the record indicates that the applicant's spouse has been treated for anxiety, depressive disorder, and depression, and has been prescribed with Trazodone, Citalopram, and Celexa. The medical documentation states that one of the causes of her emotional problems is the applicant's immigration situation.

The applicant's spouse states that she provides care and support to her elderly mother. Medical documentation in the record indicates that the mother of the applicant's spouse suffers from hypothyroidism, hypercholesterolemia, arthritis, hypertension, depression, diabetes, and

osteopenia. A statement from the sister of the applicant's spouse acknowledges that other siblings provide some financial and care support to their mother, she states that the applicant's spouse is the primary support for their mother. The sister further states that her daughter suffers from several medical conditions, including autism and cerebral palsy, and the applicant and the applicant's spouse are the primary caretakers of her daughter, as she works full time to support the family. The applicant states that his spouse is able to provide this support to her mother and her niece is that he works to provide for the financial needs of the family. The applicant's spouse states that she would be helpless economically if she is separated from the applicant, as the applicant supports their household.

The record establishes that if the waiver application were denied, the applicant's spouse would experience medical, financial, and emotional hardship as a result of her separation from the applicant, as well as the hardships she would experience due to her concern for about providing care and support for her mother and niece without the financial and emotional support provided by the applicant. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

Regarding hardship that the applicant's spouse may experience if she were to relocate to Mexico, the record indicates that the applicant's spouse was born in Mexico and is familiar with the language and customs of that country. The record also indicates that the applicant's spouse has strong family ties in the United States, including a U.S. citizen son, as well as her mother and several siblings.

As noted above, statements from the applicant, the applicant's spouse, and the brother of the applicant's spouse indicate that the applicant's spouse is the primary support and caregiver to her mother and her niece, both of whom suffer from severe medical conditions. The applicant's spouse has expressed her concern that she would be unable to provide this support if she were to relocate to Mexico to be with the applicant. Moreover, the applicant stated his spouse, who suffers from depression, would be even more depressed if she has to be separated from her family knowing that they need her. In addition, we note that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Sonora, where the applicant is from.[1]

Thus, considered in the aggregate, the record evidence establishes that the situation presented in this application rises to the level of extreme hardship to the applicant's spouse whether she remains in the United States or relocates to Mexico with him. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges

[1] As noted by the U.S. Department of State:

> Sonora is a key region in the international drug and human trafficking trades, and can be extremely dangerous for travelers. Travelers throughout Sonora are encouraged to limit travel to main roads during daylight hours.

Travel Warning-Mexico, U.S. Department of State, dated January 9, 2014.

on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). 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 favorable factors in this matter are the extreme hardships the lawful permanent resident spouse would face if the applicant were returned to Mexico, regardless of whether she accompanied him or remained in the United States; the apparent lack of a criminal record; letters of reference on his behalf; and a newspaper article showing the applicant's assistance to the community following a severe storm. The unfavorable factor in this matter is his unlawful entry the United States.

The immigration violation committed by the applicant is serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.