

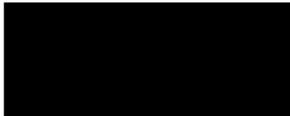
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



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



H5

FILE: [REDACTED]

Office: CHICAGO Date: **NOV 16 2010**

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:



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 "Perry Rhew".

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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 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 a visa and admission into the United States by willful misrepresentation. 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 husband and U.S. citizen children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 30, 2008.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to reside outside the United States. *Brief from Counsel*, submitted February 28, 2008.

The record contains a brief from counsel; statements from the applicant, the applicant's husband, the applicant's children, the applicant's work associates, and other friends and relatives of the applicant; a copy of the applicant's husband's lawful permanent resident card; a copy of the applicant's marriage record; copies of birth records for the applicant's children; medical documentation for the applicant's husband and son; documentation regarding the applicant's family's medical insurance; documentation in connection with the applicant's family's income and expenses; school records for the applicant's children; reports on healthcare and conditions in Mexico, and; copies of photographs of the applicant's family. The entire record was reviewed and considered in rendering this decision.

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

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 reflects that on or about March 3, 1992, the applicant obtained a nonimmigrant visa using her maiden name. She failed to disclose that she was married to a lawful permanent resident when obtaining the visa and when using it to subsequently enter the United States. She attempted to enter the United States using the visa a second time in 1994, yet the visa was canceled.¹ Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for procuring a visa and admission by willful misrepresentation. The applicant does not contest her inadmissibility on appeal.

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

¹ The applicant is presently in the United States, as she entered without inspection in or about March 1994.

- (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 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 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.

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

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. *See also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation

rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, the applicant states that she and her husband married on April 20, 1991, and that they have three U.S. citizen children, now ages 13, 15, and 18. *Statement from the Applicant*, dated January 31, 2007. She notes that her husband has not resided in Mexico since 1982. *Id.* at 4. The applicant states that the majority of her family members reside in the United States, including three sisters, one brother, and seven nieces and nephews. *Id.* at 1. She adds that her husband has substantial family ties to the United States, including his mother, five siblings, aunts, uncles, and seven nieces and nephews. *Id.* at 1-2. The applicant notes that her children are close with their cousins. *Id.* at 2.

The applicant provides that she and her husband have some family members in Mexico, including her mother and brother, as well as five of her husband’s siblings. *Id.* at 3. She notes that her sister-in-law who returned to Mexico had not found employment after six years of residing there. *Id.* She indicated that she and her family members would likely reside with her mother in San Luis Potosi should they return to Mexico, yet she expressed her concern for their access to required medical care there. *Id.*

The applicant states that she and her husband own their home, with a mortgage payment of \$1,444.14 per month. *Id.* at 2. She asserts that both she and her husband work to support their family, and that her husband earns \$576.92 weekly while she earns \$8.90 per hour. *Id.* She states that their income is just enough to cover their expenses. *Id.* She explains that she completed

schooling in Mexico and obtained a graduate equivalency diploma (GED) in the United States, while her husband only attended school in Mexico through the eighth grade. *Id.* She provides that she has concern for her and her husband's ability to obtain employment in Mexico. *Id.*

The applicant indicates that her husband was diagnosed with diabetes approximately 14 years prior to the date she issued her statement. *Id.* She explains that her husband takes multiple medications and he must monitor his blood sugar. *Id.* She notes that he could face life-threatening complications without proper medication and treatment. *Id.* She expresses concern for her family's ability to afford necessary medication for her husband in Mexico. *Id.* at 4.

The applicant states that her son, [REDACTED], has medical problems including a lack of control over urination which has caused him significant embarrassment among his siblings and peers. *Id.* at 2-3. She adds that [REDACTED] expressed suicidal ideas. *Id.* at 3. She provides that her son was referred to a urologist, and that his physician recommended that he see a psychologist. *Id.* She states that [REDACTED] medical expenses are covered by medical insurance through her employer. *Id.* She indicates that her husband would suffer emotional difficulty should they reside in Mexico due to the challenges of obtaining appropriate medical and psychological care for [REDACTED]. *Id.* at 4.

She provides that her husband will either have or care for their children alone or relocate to Mexico should the present waiver application be denied. *Id.* at 3.

The applicant states that she and her husband wish for their three children to attend college. *Id.* She asserts that her husband will endure emotional hardship should their children lose access to education in the United States. *Id.* at 5.

The applicant provides that her husband has been employed in the United States for many years, and that he is eligible for Social Security benefits upon retirement or should he become disabled. *Id.* at 3. She asserts that he would not have access to these benefits should he reside in Mexico. *Id.*

The applicant describes her participation with her church and community. *Id.* at 4.

The applicant's husband describes his extensive family ties in the United States, and he indicates that he will endure hardship should he become separated from them. *Statement from the Applicant's Husband*, dated February 2, 2007. He particularly notes that he will endure hardship should he become separated from his mother who is a widow. *Id.* at 2. He expresses his concern for whether he and the applicant can find employment in Mexico, and he discusses their assets to show that they lack resources to assist them in relocating. *Id.*

The applicant's husband describes his medical needs due to diabetes, and he states that he is concerned regarding his continued access to required medication and health care in Mexico. *Id.* he adds that he and his family members have medical insurance through the applicant's employment, and that he cannot afford his medication without it. *Id.* at 3. He provides that the applicant's insurance pays for Jonathan's medical needs, and that he would be unable to pay for the services without the coverage. *Id.*

The applicant's husband states that his family will be unable to pay for their children's college should they reside in Mexico. *Id.* He notes that he left school after the eighth grade, as he had to work to help support his family, and that he does not wish for his children to endure the same experience. *Id.*

The applicant's husband expresses concern for his loss of Social Security benefits should he reside in Mexico. *Id.* at 4. He provides that he will abandon his lawful permanent residence in the United States and lose the opportunity to return should he relocate to Mexico. *Id.* He explains that he has been unable to apply for U.S. citizenship due to his limited education and knowledge of the English language. *Id.*

The applicant submitted a letter from her husband's physician, [REDACTED] who confirms that the applicant's husband has been diabetic for 14 years and that he receives medical care. *Letter from [REDACTED]* dated January 12, 2007. The applicant further provided documentation relating to her husband's prescription medication. The applicant submitted medical documentation regarding her son that supports that he has experienced urological problems.

Upon review, the applicant has established that her husband will suffer extreme hardship if she is prohibited from residing in the United States. The applicant has shown that her husband will endure extreme hardship should he relocate to Mexico to maintain family unity. The record shows that the applicant's husband has diabetes for which he receives treatment and medication and United States. The applicant submitted a report on the healthcare system in Mexico that supports that her husband may face challenges reestablishing health care there, particularly should he experience difficulty securing employment. The AAO recognizes the importance of the applicant's husband maintaining the continuity of his medical care to regulate his condition, and the emotional hardship he will face in Mexico due to his physical health.

The record further shows that the applicant's son, Jonathan, faces a urological problem that results in a weakened control over urination, and it is evident that this condition causes psychological hardship for him. The AAO acknowledges that Jonathan will endure significant social, emotional, and physical difficulty should he fail to receive adequate medical attention in Mexico. As correctly noted by counsel, hardship to the applicant's children is considered to determine its impact on the applicant's husband. It is evident that the applicant's husband will face significant emotional hardship should Jonathan fail to receive adequate mental and physical health care and endure the continued consequences of his condition.

The combined health challenges of the applicant's husband and son constitute unusual circumstances not commonly faced when an individual relocates abroad due to the inadmissibility of a spouse.

The record shows that the applicant's husband will face numerous other elements of hardship should he reside in Mexico. The applicant has provided documentation to show that her husband has extensive family ties in the United States, and that he has resided in the country for over 20 years. The applicant has shown that she and her husband own a home in the United States and that her husband has a long history of employment here. It is evident that the applicant's husband will endure emotional hardship should he become separated from his family members and employment opportunities in the United States. The AAO recognizes that the applicant's husband wishes for their

three U.S. citizen children to continue academic study in the United States, and that such plans would be interrupted should they relocate to Mexico.

Reports support that relocating to Mexico would create financial hardship for the applicant's husband. The AAO takes notice that economic and employment conditions are generally less favorable in Mexico than they are in the United States, and that the applicant and her husband would face challenges securing new employment. *United States Central Intelligence Agency World Factbook: Mexico*, updated April 21, 2010 (estimating that in 2009 unemployment in Mexico was 5.6 percent, underemployment was as high as 25 percent, and in 2008 more than 47 percent of the population lived under the asset-based poverty line).

The AAO further takes notice that the United States Department of State issued a Travel Warning for Mexico, warning that crime and narcotics-related violence have escalated throughout the country. *United States Department of State Travel Warning: Mexico*, dated September 10, 2010.

Considering all elements of hardship in aggregate, should the applicant's husband relocate to Mexico, he will endure extreme hardship.

The applicant has shown that her husband will face extreme hardship should he remain in the United States without her. As discussed above, the applicant's husband faces medical challenges due to diabetes. The documentation regarding the applicant's family's medical insurance supports that it is tied to her employment. Thus, the applicant's husband would be faced with the need to secure alternative medical coverage should the applicant depart the United States and lose her employment. It is evident that the applicant's husband will endure emotional and physical hardship should his access to medical care be interrupted.

Also discussed above, the applicant's husband's emotional well-being is closely tied to Jonathan's continued access to medical care. Jonathan will also lose his medical coverage should the applicant depart the United States and relinquish her employment. Whether [REDACTED] resides in the United States, it is evident that his access to healthcare will be impacted by the applicant's departure, which will cause psychological difficulty for the applicant's husband.

As discussed above, the applicant's husband's and son's health problems constitute an unusual circumstance not commonly faced by family members who are separated due to inadmissibility, particularly given that their health care is funded by insurance provided by the applicant's employment in the United States.

The applicant's husband will face other elements of hardship should the applicant depart the United States and he remain. Should their children reside with the applicant's husband, he will face the substantial emotional, financial, and physical challenges of acting as a single parent for three children. While the record does not show that the applicant's husband will endure extreme financial circumstances, the AAO acknowledges that losing the applicant's economic contribution to the household will impact her husband.

The applicant and her husband have been married for approximately 20 years, and the record supports that her husband will face direct emotional difficulty should he become separated from her or their children.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that her husband will experience extreme hardship should the present waiver application be denied, whether he relocates to Mexico or remains in the United States. Thus the applicant has shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant has committed numerous violations of U.S. immigration law, including obtaining a visa by willful misrepresentation and using that visa to enter the United States, as well as entering the United States without inspection and remaining for a lengthy duration without a legal immigration status.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted a crime; the applicant's permanent resident husband would experience extreme hardship if she is prohibited from residing in the United States; the applicant's U.S. citizen son with a health condition will experience significant hardship if he resides in the United States without the applicant or relocates to Mexico; the applicant's other two U.S. citizen children will benefit from residence in the United States; the applicant has shown a propensity to engage with her community through religious activities and organizing in her neighborhood; and; the applicant has expressed credible remorse for her prior violations of U.S. immigration law.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant also bears the burden of persuasion. See *Matter of Mendez-Moralez*, 21 I&N Dec. at 301 (applicant must show that she merits a favorable exercise of discretion). In this case, the applicant has met her burden that she is eligible for a waiver and she merits approval of her application.

ORDER: The appeal is sustained.