

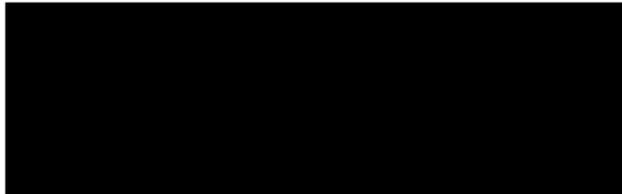
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

FILE: [REDACTED] Office: PORTLAND, OREGON Date: OCT 07 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,

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 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 seeking to procure 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 his U.S. citizen wife and lawful permanent resident mother and father.

The field office 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 Field Office Director*, dated December 27, 2007.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B*, dated January 10, 2008.

The record contains a brief from counsel in support of the appeal; statements from the applicant's wife, the applicant's mother, the applicant's sister, the applicant's brother, teachers of the applicant's son, and the applicant's friends; copies of birth certificates for the applicant, the applicant's children, and the applicant's wife; a report on the educational system in Mexico; copies of mortgage, tax, employment, and income documents; copies of medical documents for the applicant's son; a copy of the applicant's wife's business license; a copy of the applicant's father's lawful permanent resident card, and; a copy of the applicant's marriage record. 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 April 3, 1996 the applicant attempted to enter the United States by presenting a United States birth certificate and claiming to be a citizen of the United States. The applicant was deported to Mexico on April 8, 1996. On July 24, 2007, in an interview in connection with his Form I-485 application to adjust his status to lawful permanent resident, the applicant testified that he subsequently attempted to enter the United States in December 1996 by presenting false travel documentation, including a Mexican passport with a border crossing card. The applicant indicated that his fraudulent documentation was discovered and he was returned to Mexico. The applicant testified that later in December 1996 he entered the United States without inspection. Based on the foregoing, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by willful

misrepresentation. The applicant does not contest his inadmissibility on appeal. Thus, he requires a waiver under section 212(i) of the Act.

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

- (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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and parents are the only qualifying relatives 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, counsel contends that the applicant’s wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated February 6, 2008. Counsel asserts that new facts have arisen since the date of the field office director’s decision. *Id.* at 1. Counsel explains that the applicant and his wife recently had a child who was born with breathing problems that require constant medical attention. *Id.* Counsel provides that the child receives medication through a nebulizer every four hours, and that this treatment will continue for an indefinite period. *Id.* Counsel contends that the applicant’s wife will face significant challenges should she be compelled to care for their three children alone, particularly their youngest with medical needs. *Id.* at 1-2. Counsel asserts that relocating to Mexico will create hardship for the applicant’s family due to separating their new child from his doctor in the United States who is familiar with his medical issues. *Id.* at 2. Counsel states that this hardship is beyond the normal challenges endured by the families of those who are deemed inadmissible. *Id.*

Counsel references an unpublished AAO decision in which extreme hardship was found for a spouse who would be compelled to care for a child with medical needs alone. *Id.*

Counsel states that the applicant's wife would experience financial difficulty should she lose the applicant's contribution to their household. *Id.* Counsel asserts that the applicant's wife has limited time available for employment due to the medical needs of their child. *Id.* Counsel explains that the applicant's family relies on his income almost exclusively. *Id.* Counsel indicates that the applicant's wife, even if working full time, is incapable of generating sufficient income to meet the needs of their household, including their monthly mortgage of \$1,800 that is scheduled to increase to \$2,500 per month. *Id.* Counsel asserts that the applicant's wife's economic difficulty would be greater than that experienced by an average household. *Id.*

Counsel discusses the applicant's wife's family history, including the fact that her parents abandoned her at age six. *Id.* at 3. Counsel asserts that the applicant's wife has had difficulty overcoming her past and that she does not have the normal strength and courage necessary to withstand separation from the applicant. *Id.*

Counsel states that the applicant's wife has no family ties in Mexico. *Id.*

Counsel asserts that the applicant has no job prospects or close relatives in Mexico, and that his entire family lives in the United States. *Id.*

Counsel states that the applicant's oldest son, Salvador, needs special educational support in school, and that removing him from his current program would be detrimental to his success. *Id.* Counsel references a letter from Salvador's teacher in which she states that Salvador needs the support of both parents. *Id.*

Counsel states that the applicant's wife has started her own business and its continued success requires her to remain in the United States. *Id.* Counsel provides that the applicant's wife requires the applicant's support in order to operate our business, and that she will lose her effort and investment without the applicant's presence. *Id.*

Counsel asserts that the applicant's aging parents receive financial support from the applicant to cover their medical costs. *Id.* Counsel indicates that the applicant's mother has varicose ulcers and mobility problems, and that she requires the applicant's assistance with her medication costs. *Id.*

Counsel references a second unpublished AAO decision to stand for the proposition that economic hardship, when combined with other difficulties, can amount to extreme hardship. *Id.* at 4-5.

The applicant's wife states that her family will suffer hardship if the applicant is compelled to depart the United States. *Statement from the Applicant's Wife*, dated February 5, 2008. She explains that their newborn son has been hospitalized several times for respiratory problems, including infections and other asthma-related problems, that require medication every four hours using a machine. *Id.* at 1. The applicant's wife explains that the applicant's assistance with their children is an enormous help, as they are young and require significant attention. *Id.* She notes that she is unable to work full-time due to the fact that she is breastfeeding and caring for her child with respiratory problems. *Id.* She adds that their two younger children are in diapers which elevates the cost of daycare, and that it is difficult for her to work sufficient hours to meet the costs. *Id.* She notes that her household bills, including their mortgage, are increasing, and that she is afraid that they will lose their home.

Id. She expresses concern for her newborn child losing the opportunity to be cared for by the applicant in his greatest time of need. *Id.*

The applicant's wife previously stated that she met the applicant in 1994 and that their first son, [REDACTED], was born in 1996. *Prior Statement from the Applicant's Wife*, dated March 19, 2007. The applicant's wife described her family history including that she was taken to Mexico at age six to live with a cousin, and she expressed that she had feelings of abandonment. *Id.* at 1. She provided that she returned to United States at age 15, and she has never considered Mexico her home. *Id.* She stated that she does not wish for her children to be separated from her or the applicant, particularly given her past experiences. *Id.* She provided that if she is separated from the applicant her feelings of abandonment will return. *Id.*

The applicant submits a letter from a teacher, [REDACTED] who attests that [REDACTED] struggles with academics and he requires help. *Letter from [REDACTED]*, dated March 23, 2007. [REDACTED] states that [REDACTED] has been attending additional study sessions and that he will benefit from additional help from his parents. *Id.* at 1.

The applicant's mother explained that she and the applicant's father immigrated to the United States. *Statement from the Applicant's Mother*, dated December 19, 2006. She expressed concern for the applicant's wife and children should the applicant be prohibited from remaining in the United States. *Id.* at 1. She indicated that she cannot work and that she has varicose ulcers which inhibit her mobility. *Id.* She noted that the applicant assists her with the costs of required medication. *Id.* She expressed that she will endure emotional hardship should she be separated from the applicant. *Id.* She added that the applicant assists [REDACTED] with his homework, and that Salvador will experience hardship if he loses the applicant's presence and assistance. *Id.*

Upon review, the applicant has established that a qualifying relative will experience extreme hardship if he is prohibited from remaining in the United States. The applicant has shown that his wife will suffer extreme hardship should he depart United States and she remain.

The applicant presents documentation to show that he and his wife had a new child on November 12, 2007, after the field office director issued his decision. The applicant provides medical documentation that shows that his new son has experienced significant medical problems since his birth. These problems include respiratory difficulty such as asthma, pneumonia, and bronchiolitis. His health problems required readmission to a medical facility for treatment and observation, and his symptoms have included coughing and difficulty breathing. The AAO notes that the most recent medical record for the applicant's son, dated December 21, 2007, reported that his symptoms were improving. However he remained under observation, and he was scheduled to undergo a chest x-ray and further treatment. The AAO observes that the present appeal was filed on January 11, 2008, and that the applicant supplemented the record on or about February 6, 2008. While the record lacks updated documentation to indicate whether the applicant's son has continued to experience unusual health problems, the AAO gives due consideration to the applicant's son's health status as of the date of filing the appeal.

The applicant has further submitted documentation that supports that his eldest son, who was in the fifth grade at the time of filing the appeal, requires assistance with his academic study both at home

and at school. The AAO acknowledges that assisting a child who is experiencing difficulty with educational activities requires a greater degree of attention and support from a parent, and that the applicant's wife will be compelled to support her son alone without the applicant's assistance.

As noted above, the applicant's children are not qualifying relatives as contemplated by section 212(i) of the Act. Yet, it is evident that hardship to the applicant's children creates significant hardship for the applicant's wife. The record supports that the applicant's wife will face unusual difficulty in caring for an infant with medical needs while also meeting the needs of her other two young children alone. The applicant's wife's parental responsibilities exceed those commonly faced by individuals who become separated from a spouse due to inadmissibility. The applicant has shown that his wife will endure significant emotional consequences due to acting as a single parent for her three children, and due to sharing in their emotional difficulty as a result of being separated from the applicant.

The applicant's wife expressed that she will endure emotional hardship due to separation from the applicant, particularly given her history of being abandoned by her parents as a child. The AAO acknowledges that the applicant's wife had an unusual family experience as a child that raises her present sensitivity to family separation.

Considering all elements of hardship in aggregate, should the applicant depart the United States and his wife remain, his wife will suffer extreme hardship.

The applicant has shown that his wife will suffer extreme hardship should she relocate to Mexico to maintain family unity. As discussed above, the record shows that the applicant's newborn son has faced significant health concerns and that he was under close medical supervision as of the date of filing the appeal. The AAO acknowledges that relocating him to Mexico and separating him from the medical professionals who provide his care in the United States will create physical hardship for him as well as significant emotional difficulty for the applicant's wife. The applicant's newborn son's illness constitutes an unusual circumstance not commonly faced by families who relocate abroad due to inadmissibility.

Also discussed above, the applicant's eldest son has experienced difficulty in school, and it is evident that removing him from his current program and relocating him to a new school and educational system in Mexico will disrupt his current progress. This circumstance will create emotional hardship for the applicant's wife.

The applicant's wife indicated her concern regarding financial hardship she may experience should she relocated to Mexico, in part due to the possible loss of their family home and her business. The record lacks adequate documentation regarding the applicant's wife's business in order for the AAO to properly assess whether she would endure significant financial loss should she reside in Mexico. Nor has the applicant provided sufficient documentation regarding his home such that the AAO can determine its financial impact on his family should they no longer reside in the United States. Yet, it is evident that relocating abroad involves expenses and has an impact on employment and business activities, as well as property ownership. The AAO acknowledges that the financial needs of a family comprised of two adults and three young children are considerable, particularly with a young child with unusual medical needs. The AAO considers the financial consequences of

residing in Mexico for the applicant's family when assessing the aggregate hardship to the applicant's wife.

The applicant's wife would face other elements of hardship should she depart the United States and reside in Mexico, such as separation from her community and family members in the United States, and separation from the culture with which she identifies.

Considering all elements of hardship to the applicant's wife in aggregate, should she relocate to Mexico to maintain family unity, she will face extreme hardship. Based on the foregoing, the applicant has provided sufficient documentation to show that denial of the present waiver application "will result in extreme hardship" to his wife, 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 falsely represented that he was a citizen of the United States in order to gain admission. He made further attempts to enter the United States unlawfully including presenting a fraudulent Mexican passport and border crossing card and entering without inspection. The applicant has remained in the United States for a lengthy period 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 U.S. citizen wife and children will experience extreme hardship if he is prohibited from residing in the United States, and; the applicant has cultivated a close family unit with his immediate family, siblings, and parents in the United States..

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

In proceedings regarding 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 he merits a favorable exercise of discretion). In this case, the applicant has met his burden that he is eligible for a waiver and he merits approval of his application.

ORDER: The appeal is sustained.