

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



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

**PUBLIC COPY**



tl5

FILE:



Office: MEXICO CITY

Date:

OCT 08 2010

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought admission to the United States through fraud or misrepresentation of a material fact and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A) for having been removed from the United States. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and permission to reapply for admission pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to return to the United States and reside with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated February 25, 2008.

On appeal, the applicant asserts that all of the factors of hardship to her husband were not considered and an improper standard of proof was applied in the denial of the waiver application. *See Notice of Appeal to the AAO (Form I-290B)*. The applicant's husband further states that he has been married to the applicant for 25 years and they have one son together, and both he and their son would suffer extreme hardship if the applicant continues to live separately from them. *Statement in Support of Form I-290B* dated March 28, 2008. He further states that the applicant is a person of good moral character and has paid taxes and never received public assistance. *Statement in Support of Form I-290B*. In support of the appeal the applicant submitted copies of medical records for her husband and son, college records for her son, a statement from her husband, a letter from her husband's employer, copies of bills and other financial documents, copies of income tax returns, and information on conditions in Mexico. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of

the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(a)(9)(A) of the Act provides:

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission

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 the 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.

The record reflects that the applicant is a fifty-eight year-old native and citizen of Mexico who attempted to procure admission to the United States on January 26, 2002 by presenting a fraudulent permanent resident card and again on January 28, 2002 by presenting a fraudulent Mexican passport and visa. The record further reflects that the applicant's husband, whom she married on March 24, 1983, is a sixty year-old native of Mexico and citizen of the United States. The applicant currently resides in Nayarit, Mexico and her husband resides in San Jose, California.

The applicant's husband asserts that he has been married to the applicant for over 25 years and they have been living apart for some time because she was denied admission to the United States. *Statement of* [REDACTED] dated March 28, 2008. He states that he has been separated from his wife since May 1993, it is difficult to be alone in their home, and although he visits when he can, it is not enough. *Statement of* [REDACTED] He further claims that his son has had to choose whether to live with him or the applicant, and both he and his son have suffered emotional hardship as a result. The applicant's husband states,

The psychological harm in the worrying of not knowing how your spouse is doing day in and day out. The worrying that the economy is poor . . . The psychological harm of being alone and raising [a] son alone, all add up to an extreme hardship to us all.

He further states that his son was living with him and attending San Jose City College, but when the immigrant visa was denied the applicant became very depressed and his son left school to comfort her and has not been able to return to school. *Statement of* [REDACTED] The applicant's husband further states that he is experiencing financial hardship because he must support two households, one in Mexico and one in the United States. In support of this assertion he submitted copies of bills and receipts for money transferred to the applicant in Mexico.

The AAO further notes that since appeal was submitted, the U.S. Department of State has issued a Travel Warning for Mexico warning of dangerous conditions mostly along the U.S.-Mexico border, but also in the state of Nayarit, where the applicant resides. The Travel Warning states,

Since 2006, the Mexican government has engaged in an extensive effort to combat drug-trafficking organizations (DTOs). Mexican DTOs, meanwhile, have been engaged in a vicious struggle with each other for control of trafficking routes. In order to prevent and combat violence, the government of Mexico has deployed military troops and federal police throughout the country. U.S. citizens should expect to encounter military and other law enforcement checkpoints when traveling in

Mexico and are urged to cooperate fully. DTOs have erected unauthorized checkpoints, and killed motorists who have not stopped at them. In confrontations with the Mexican army and police, DTOs have employed automatic weapons and grenades. In some cases, assailants have worn full or partial police or military uniforms and have used vehicles that resemble police vehicles. According to published reports, 22,700 people have been killed in narcotics-related violence since 2006. The great majority of those killed have been members of DTOs. However, innocent bystanders have been killed in shootouts between DTOs and Mexican law enforcement or between rival DTOs. Recent violent attacks and persistent security concerns have prompted the U.S. Embassy to urge U.S. citizens to defer unnecessary travel to Michoacán and Tamaulipas, to parts of Chihuahua, Sinaloa, Durango, and Coahuila, (see details below) and to advise U.S. citizens residing or traveling in those areas to exercise extreme caution. . . .

Since 2006, large firefights have taken place in towns and cities in many parts of Mexico, often in broad daylight on streets and other public venues. Such firefights have occurred mostly in northern Mexico, including Ciudad Juarez, Tijuana, Chihuahua City, Nogales, Nuevo Laredo, Piedras Negras, Reynosa, Matamoros and Monterrey. Firefights have also occurred in Nayarit, Jalisco and Colima. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. . . .

U.S. citizens should also exercise extreme caution when traveling in southern Nayarit in and near the city of Tepic which has recently experienced unpredictable incidents of DTO violence. The number of violent incidents involving DTOs has increased in recent months throughout Jalisco, Nayarit and Colima. . . . *U.S. Department of State, Bureau of Consular Affairs, Travel Warning- Mexico, August 27, 2010.*

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that her husband is experiencing extreme hardship due to their separation, including emotional and psychological hardship. The record indicates that the applicant has been married to her husband for twenty-seven years and that they have lived apart since 1993. The record further reflects that the applicant's son was attending college in the United States in September 2005, but that he returned to Mexico and was in Nayarit, Mexico in March 2006 when he suffered from appendicitis. The applicant's husband is now sixty years old and states that the prospect of permanent separation from his wife is resulting in extreme emotional and psychological hardship to him and his son, who relocated to Mexico because they applicant was depressed over the denial of her immigrant visa. This emotional hardship and concern over the applicant's safety due to violent incidents in the state of Nayarit where the applicant resides, when combined with the financial hardship of having to support two households, rises to the level of extreme hardship for the applicant's husband, particularly in light of the prospect of permanent separation from his wife of twenty-seven years pursuant to section 212(a)(6)(C)(i) of the Act. As noted above, 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.

The record further establishes that the applicant's husband would suffer extreme hardship if he relocated to Mexico to reside with the applicant. The applicant's husband has resided in the United States for over twenty years and has been employed with the same company since 2001. The applicant's husband is now sixty years old, and the hardship of abandoning his employment and the difficulty he would have finding employment and adjusting to economic and social conditions in Mexico after over twenty years in the United States, would rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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 section 212(i) 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). *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "[b]alance 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 adverse factor in the present case is the applicant's repeated attempts to enter the United States by presenting a fraudulent document. The favorable factors in the present case are the hardship to the applicant's husband and son and the applicant's lack of a criminal record or other immigration violations.

The AAO finds that immigration violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained and the waiver application approved.

The AAO notes that the District Director denied the applicant's Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212) in the same decision denying Form I-601. The AAO notes that approval of an application for permission to reapply for admission after removal pursuant to section 212(a)(9)(A)(iii) of the Act, like a waiver of inadmissibility pursuant to section 212(i) of the Act, requires the weighing of negative and positive factors to determine whether a favorable exercise of discretion is warranted. Since the favorable factors have been found to outweigh the negative factors in the present case, the director shall reopen and approve the applicant's Application for Permission to Reapply for Admission to the United States after Deportation or Removal.

**ORDER:** The appeal is sustained and the waiver application approved. The District Director shall reopen and approve Form I-212.