

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**

H5

[REDACTED]  
CHULA VISTA, CA 91911

FILE:

[REDACTED] Office: MEXICO CITY

Date:

SEP 02 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)

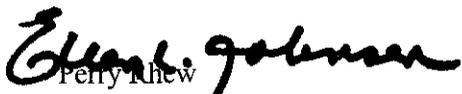
ON BEHALF OF PETITIONER:

[REDACTED]

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 Thew  
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 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 having procured admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the son of a Lawful Permanent Resident mother and is the beneficiary of an approved Petition for Alien Relative filed by his U.S. Citizen sister. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his mother.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated April 2, 2008.

On appeal, counsel for the applicant asserts that the applicant's parents would suffer extreme hardship if the applicant were denied admission to the United States because of serious medical conditions, and states that the applicant's father was suffering from terminal bladder and liver cancer and was experiencing anxiety due to his inability to see his son again. *Brief in Support of Appeal* at 2. Counsel further states that the applicant's mother is suffering from Hepatitis C and requires ongoing medical treatments and is suffering emotionally without the love and support of her son. *Brief* at 2-3. In support of the appeal counsel submitted medical records for the applicant's parents, letters from the applicant's parents and from his sister, a letter from the hospice where the applicant's father was residing, and information on conditions in Mexico. The entire record was reviewed and considered in arriving at 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.

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. Public records indicate that the applicant's father, who was terminally ill at the time the appeal was filed, is now deceased. The applicant's mother is a Lawful Permanent Resident and is therefore 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).

Although 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.

In the present case, the record reflects that the applicant is a forty-two year-old native and citizen of Mexico who was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States in December 1992 by presenting a false U.S. birth certificate. The applicant’s mother is a seventy-two year-old native and citizen of Mexico and Lawful Permanent Resident. The applicant currently resides in Tijuana, Mexico, and his mother resides in Chula Vista, California.

Counsel for the applicant asserts that the applicant’s mother is suffering extreme hardship due to separation from the applicant because she suffers from Hepatitis C and needs the love and support of her son. In support of this assertion counsel submitted medical records for the applicant’s mother stating that she was diagnosed with hepatitis C and cirrhosis of the liver, tolerated her treatment poorly, and required several blood transfusions and hospital admissions during her treatment. Her physician further states that she is at risk for progression of the disease and requires long-term follow up and is a candidate for a possible liver transplant in the future. *See medical record prepared by Kenneth Johnson, M.D.* dated February 21, 2008.

The applicant’s mother states that she is receiving ongoing treatment and medications for her condition and has been told that she might need a liver transplant in the future, and she feels tired and cannot walk very much. *Letter from* [REDACTED] She further states that at her age it is important to have her family together and it is causing extreme emotional hardship be ill and not be able to see her son.

Counsel additionally asserts that the increasingly dangerous conditions in Mexico, including a high rate of murders and kidnappings, is a factor that increases the concern and anguish his mother is suffering in his absence. *Brief* at 3. In support of this assertion counsel submitted a Travel Alert issued by the U.S. Department of State concerning violence in Mexico. The AAO notes that since

the appeal was submitted, the Department of State has issued Travel Warnings for Mexico, and the most recent warning states:

The Department of State has issued this Travel Warning to inform U.S. citizens traveling to and living in Mexico about the security situation in Mexico. The authorized departure of family members of U.S. government personnel from U.S. Consulates in the northern Mexico border cities of Tijuana, Nogales, Ciudad Juarez, Nuevo Laredo, Monterrey and Matamoros remains in place. However, based upon a security review in Monterrey following the August 20, 2010 shooting in front of the American Foundation School in Monterrey and the high incidence of kidnappings in the Monterrey area, U.S. government personnel from the Consulate General in Monterrey have been advised that the immediate, practical and reliable way to reduce the security risks for children of U.S. Government personnel is to remove them from the city. Beginning September 10, 2010, the Consulate General in Monterrey will become a partially unaccompanied post with no minor dependents of U.S. government employees. This Travel Warning supersedes the Travel Warning for Mexico dated July 16, 2010 to note the changing security situation in Monterrey. . . .

### **General Conditions**

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.

### **Violence Along the U.S.-Mexico Border**

Much of the country's narcotics-related violence has occurred in the northern border region. For example, since 2006, three times as many people have been murdered in Ciudad Juarez, in the state of Chihuahua, across from El Paso, Texas, than in any other city in Mexico. More than half of all Americans killed in Mexico in FY 2009 whose deaths were reported to the U.S. Embassy were killed in the border cities of Ciudad Juarez and Tijuana.

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.

The situation in northern Mexico remains fluid; the location and timing of future armed engagements cannot be predicted. U.S. citizens are urged to exercise extreme caution when traveling throughout the region, particularly in those areas specifically mentioned in this Travel Warning. . . .

Travelers on the highways between Monterrey and the United States (notably through Nuevo Laredo and Matamoros) have been targeted for robbery that has resulted in violence and have also been caught in incidents of gunfire between criminals and Mexican law enforcement. Travelers should defer unnecessary travel on Mexican Highway 2 between Reynosa and Nuevo Laredo due to the ongoing violent competition between DTOs in that area. Criminals have followed and harassed U.S. citizens traveling in their vehicles in border areas including Nuevo Laredo, Matamoros, and Tijuana. U.S. citizens traveling by road to and from the U.S. border through Nuevo Leon, Coahuila, Durango, and Sinaloa should be especially vigilant. Criminals appear to especially target SUVs and full-size pick-up trucks for theft and car-jacking along these routes. . . . *U.S. Department of State, Bureau of Consular Affairs, Travel Warning for Mexico* dated August 17, 2010.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The records from the physician treating the applicant's mother state that she is receiving ongoing treatment for hepatitis C and cirrhosis of the liver, is at risk for progression of the disease, and is a candidate for a liver transplant in the future. In light of her age and medical condition as well as increasingly violent conditions in Tijuana where the applicant resides, the emotional and physical hardship to the applicant's mother that would result if he is denied admission and she remains separated from him in the United States would rise to the level of extreme hardship. The evidence on the record further indicates that the applicant's mother has been a Lawful Permanent Resident since 1993, currently resides with her daughter in California, and her other adult children are residing lawfully in the United States. The hardship that would result from having to readjust to conditions in Mexico after over seventeen years in the United States and discontinue her

medical care in California as well as separation from her family members in the United States and the possible risk of harm if she relocated to Tijuana with the applicant would amount to extreme hardship to the applicant's mother if she returned to Mexico.

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 a waiver 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). See *Matter of Mendez-Morales*, 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 adverse factor in the present case is the applicant's immigration violation, seeking to enter the United States by presenting a fraudulent U.S. birth certificate in 1992. The favorable factors in the present case are the hardship to the applicant's mother, the applicant's family ties to the United States, and the applicant's lack of a criminal record or additional immigration violations.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.