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



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



H5

DATE **AUG 01 2011** Office: CIUDAD JUAREZ

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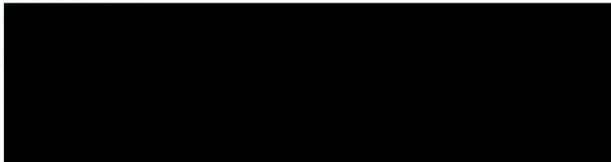
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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, appearing to read "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico who used a photo-altered Temporary Alien Registration Card in an attempt to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 23, 2009.

On appeal, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is not admitted to the United States. *Form I-290B*, received March 23, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented a photo-altered Temporary Alien Registration Card in an attempt to enter the United States on June 3, 2004, and thus attempted to enter the United States by materially misrepresenting her identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record contains, but is not limited to, the following evidence: statements from the applicant's spouse; a copy of a divorce decree and custody arrangement relating to the applicant's spouse's previous marriage; copies of a translated hospital record pertaining to the applicant's spouse, including translated orders for blood from a blood bank; a statement from the applicant's spouse's ex-wife asserting that he makes child support payments in the amount of \$300 per month; copies of money receipts for payments made to the applicant by the applicant's spouse to support her in Mexico; copies of travel receipts and travel documents pertaining to the applicant's spouse's trips to Mexico; a statement from [REDACTED] of R.C.O Reforesting attesting to the fact that the applicant's spouse worked for him for many years and that he would employ him again; copies of the applicant's spouse's tax returns; pay stubs and other financial records; a Psychological Evaluation of the applicant's spouse by [REDACTED] and a statement from the applicant.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s spouse has submitted a statement asserting that he will experience physical, emotional and financial hardship he has experienced due to the applicant’s inadmissibility. *Statement of the Applicant’s Spouse*, received April 23, 2009. He explains that he attempted to relocate to Mexico with the applicant in 2008, but was the victim of an armed robbery and was shot several times when he and the applicant tried to open a business there. He explains that the incident nearly resulted in his death, that it terrifies both he and his wife to think of him returning to Mexico, that he suffers emotional and physical problems resulting from the attack and that he still carries two bullets from the attack lodged in his hip area.

The applicant’s spouse also explains that, based on the attack on his life, which was witnessed by the applicant, he worries constantly about the applicant who remains in Mexico and is in hiding with her parents. He notes that the assailants were never apprehended and the police never investigated the incident, heightening their fears that they might return to attack himself or the applicant again. The applicant’s spouse asserts that, if he were to relocate to Mexico, he would have difficulty finding employment because of his fear of crowds as a result of being shot.

The applicant has submitted a statement as well and corroborates that her spouse was the victim of a brutal attack in Mexico, and explains that she had to seek blood donations in order for the applicant to survive. *Statement of the Applicant*, April 16, 2009. She states that she lives in fear because of the attack.

The record does not include a copy of any police report corroborating the attack on the applicant's spouse. However, the record does include a corroborating statement from the applicant and hospital records indicating that the applicant's spouse suffered several gunshot wounds and was in the hospital for a significant period of time. Statements concerning the attack are consistent between the applicant, the applicant's spouse and [REDACTED] who submitted a psychological evaluation of the applicant's spouse. The AAO finds that the attack suffered by the applicant and the resulting physical and emotional hardship represent a significant hardship impact to the applicant's spouse, and will give them due consideration in aggregating the impacts of relocation.

With regard to financial hardship, the record includes copies of tax returns, pay stubs and an employment letter corroborating the employment history of the applicant's spouse. There is evidence establishing that the applicant's spouse has a child from a previous marriage who resides in the United States, and that the applicant's spouse has visitation rights and pays \$300 per month in financial support for the child. This represents a significant family tie to the United States, as well as the financial obligation of providing financial support for the child.

When these hardships are considered in aggregate along with the normal hardships associated with relocation, they establish that the applicant's spouse would experience impacts rising to the level of extreme upon relocation.

With regard to the hardship impacts of separation, the applicant's spouse has stated that he still suffers physical pain from the assault on his life in Mexico, carrying two bullets in his hip, and that he tires easily. He also asserts that he has experienced significant financial impact due to the applicant's absence from the United States from having to pay child support for a child from a previous marriage, supporting himself in the United States, supporting the applicant in Mexico and bearing the burden of frequent travels to see the applicant. He states that, due to frequent travels to Mexico, he has been unable to maintain stable employment, and that if the applicant were admitted to the United States he would be able to return to a previous job and meet his financial obligations. The applicant's spouse also states that he is still carrying two bullets in his hip from the previous attack, and suffers physical pain as a result. He explains that he still suffers emotionally and physically from the attack he suffered in Mexico, and that if the applicant were allowed to return she could assist him physically by taking care of household chores and allowing him to focus on employment.

The record includes a Psychological Evaluation of the applicant's spouse by [REDACTED]. In his report, [REDACTED] discusses the emotional impacts on the applicant's spouse of being separated from the applicant and from the attack on his life while residing in Mexico. [REDACTED] notes that the applicant's spouse exhibits the symptoms of traumatic stress disorder, including intrusive memory recall, feelings of helplessness and horror, hypervigilance and exaggerated startle response. [REDACTED]

also discusses the symptoms of emotional stress due to separation from the applicant including sleeplessness, anxiety and depression, all of which are exacerbated by his traumatic experience in Mexico and the fear he has for the applicant's safety. [REDACTED] diagnoses the applicant's spouse with Anxiety, Depression and Traumatic Stress Disorder. Based on this evidence the record supports that the applicant's spouse will experience significant and uncommon emotional hardship due to separation from the applicant.

With regard to the applicant's spouse's assertions that he has been unable to maintain stable employment due to his frequent travels, which also represent an additional financial burden, the record contains copies of numerous travel itineraries and bus tickets showing his frequent travels to Mexico. The record also contains a letter from a previous employer of the applicant's spouse attesting to his work history and stating that he would be willing to hire the applicant's spouse again. These documents support the applicant's spouse's assertions that he has experienced a significant financial burden and disruption in his ability to remain employed due to his frequent travel.

As noted, the applicant's spouse states that he is concerned for the applicant's safety because the applicant is currently residing in the area where the applicant's spouse was attacked.

The record shows that the applicant's spouse is experiencing physical, emotional and financial hardship. When these impacts are examined in the aggregate and considered in light of the evidence in the record, the AAO can determine that the applicant would experience uncommon hardship both upon relocation and upon separation.

As the applicant has established that a qualifying relative will experience extreme hardship both upon relocation and separation, the AAO may now consider whether she warrants a waiver as a matter of discretion.

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(h)(1)(B) 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation. The favorable factors in this case include the presence of the applicant's spouse in the United States, the extreme hardship the applicant's spouse would experience either upon separation or relocation and the lack of any criminal record during her residence in the United States. The favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.