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



HLS

DATE: **AUG 02 2011**

Office: MEXICO CITY (Ciudad Juarez)

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who resided in the United States from January 10, 1996 (when he entered the U.S. without admission) until November 2007 (when he departed the U.S. to apply for an immigrant visa in Mexico). The applicant was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(II), for having procured admission to the United States through fraud or misrepresentation (claiming to be a U.S. citizen at a U.S. port of entry on January 6, 1996), and for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to live in the United States with his U.S. citizen spouse.

In a decision dated June 20, 2002, the director concluded that the applicant failed to establish his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that his U.S. citizen wife will experience extreme emotional and financial hardship if he is denied admission into the United States. To support his assertions, the applicant submits: letters written by his wife, friends and family members; documentation relating to his, and his wife's, financial obligations and employment; Mexican country conditions information; and a psychological evaluation prepared for his wife. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

The record in this case contains clear evidence that on January 6, 1996, the applicant attempted to enter the U.S. by making a false claim to U.S. citizenship to a U.S. immigration official. The applicant was apprehended and ordered excluded and removed to Mexico on January 9, 1996. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking to procure admission to the United States by willfully misrepresenting a material fact.¹

¹ The provisions of Section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship were added to the Act as part of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The Act currently allows no waiver for false claims to U.S. citizenship. However, if the false claim was made prior

Section 212(i) of the Act provides that:

- (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.

The record contains evidence establishing that the applicant married a U.S. citizen on February 25, 1998. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

Section 212(a)(9)(B) of the Act provides in pertinent part:

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

to the enactment of IIRIRA, September 30, 1996, it is treated as misrepresentation under section 212(a)(6)(C)(i) of the Act and the alien is eligible to apply for a waiver under section 212(i). *See Memorandum by* [REDACTED]

The record reflects that the applicant was born on February 3, 1979. He entered the U.S. without admission on January 10, 1996, at the age of 17. Based on the age-based exception contained in section 212(a)(9)(B)(iii) of the Act, the applicant's unlawful presence in the U.S. between January 10, 1996 and February 2, 1997 will not be taken into account for construction of unlawful presence purposes. However, the applicant remained unlawfully present in the U.S. for more than a year from February 3, 1997 through July 17, 1998, when a Form I-485, Application to Register Permanent Residence or Adjust Status, was properly filed.² In addition, the applicant remained unlawfully in the U.S. between June 18, 2002, when his Form I-485 was denied, until November 2007, when he departed the United States for immigrant visa filing purposes. The applicant was unlawfully present in the U.S. for more than one year, and he is seeking readmission into the U.S. within 10 years of his last departure from the United States. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant's spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

Both sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration

² The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.*

Appeals (BIA) 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 BIA 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 BIA 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 BIA 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 record in this case contains refers to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under sections 212(i) and 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The record contains three letters written by the applicant's wife reflecting that her husband has been living with his family in Oaxaca, Mexico for over 3 years while she has stayed in the U.S. with their young (7-year-old) son. She indicates that she and her husband have a strong relationship, and that he also helped her care for their son. The applicant's wife states that her husband's employment of 10 years was terminated in December 2007, following his departure from the United States. She also lost her job in November 2007, due to numerous absences related to her husband's immigration situation. She states that she was unable to pay her home and utility bills, and she indicates that she was forced to file for bankruptcy in December 2007. The applicant's wife indicates that she and her son have rarely visited the applicant since his departure, due to financial constraints and also due to her fear for her family's safety in Mexico. She indicates further that her son speaks Spanish, and is able to communicate with his grandparents in Oaxaca, but she is unable to speak the language. The applicant's wife obtained a new job as a teacher's assistant in 2008, but she indicates that she is still having trouble paying for her bills and mortgage. She misses her husband's emotional and financial support, and she states that her son is distraught and cries when he is separated from his father, causing her to feel sad and worried about the effect of her husband's absence on their son. She indicates that she does not want to move to Mexico to be with her husband because she would have to give up her job, which supports, and provides health benefits to, the family. The applicant's wife states that it would also be expensive to enroll her son in school in Mexico, and she is particularly concerned that she and her son will be the targets of crime and violence because of their U.S. citizenship status, and due to crime and violence throughout the country.

The record also contains letters from family and friends indicating that the applicant's wife is struggling financially and emotionally due to her husband's absence, and describing the applicant as a helpful, responsible family man, who his wife and son need by their side in the U.S.

Financial and employment documents in the record reflect that the applicant's wife lost her restaurant job in November 2007; that she was hired as a full-time teacher's assistant in 2008; and that her current job provides health care and day-care assistance to her family. The documents further reflect that the applicant was employed full-time with a construction company for 10 years prior to his departure from the U.S. The documents additionally contain copies of mortgage statements and bills reflecting amounts owed, and in several cases that the bills are past due. Bank

statements and federal tax return information is included, and the documents include information reflecting that the applicant's wife filed for bankruptcy in late 2007.

The record also contains a psychological evaluation prepared for the applicant's wife on March 18, 2009, reflecting that the evaluation was initiated and prepared for purposes of the present waiver application. The evaluation reflects that the evaluator conducted one interview with the applicant's wife. The evaluator reiterates circumstances and emotional issues as related to her by the applicant's wife during the interview, and she states that she makes no endorsement of the validity or accuracy of the history. Based on the information provided by the applicant's wife during her interview, the evaluator makes diagnostic impressions that she has: "Adjustment disorder with mixed anxiety and depressed mood, chronic"; "gastric problems, by self-report"; and "separation from husband; economic problems; housing problems; single parent." The evaluator concludes that the applicant's wife's separation from her husband is taxing her emotional and financial resources, and that it is likely that her symptomatology will decrease in severity once the situation with her husband is resolved.

Upon review, the AAO finds that the evidence in the record fails to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The evidence fails to establish that the applicant's wife would experience extreme financial hardship in either the U.S. or in Mexico if the applicant's waiver application is denied. The evidence reflects that she resolved many of her financial problems by declaring bankruptcy, and she is presently working full-time at a new job that provides income, health care and day-care assistance to her and her son. There is no evidence in the record to establish that the applicant's wife would have to pay for her son's education if he went to school in Mexico. Furthermore, the record contains no evidence to indicate that the applicant's wife must support the applicant financially in Mexico, or that the applicant is not working in Mexico, or would be unable to provide for his family if they moved there.

In addition, the psychological evaluation for the applicant's wife fails to demonstrate that she is presently experiencing emotional hardship beyond that normally experienced upon separation from a family member, or that she will suffer extreme emotional hardship in the future if the applicant is denied admission into the United States. The psychological evaluation contained in the record is based on one interview.. The evaluator takes into account only the information gathered from the applicant's wife's own discussion of her situation. No reference is made to documentary or other evidence reviewed in making diagnostic impressions, and the evaluation contains no actual diagnosis. It is further noted that the evaluator does not recommend care or treatment for the applicant's wife, and the record contains no evidence that the applicant's wife has sought, or requires psychological treatment.

The applicant also failed to establish that his family would experience extreme emotional or physical harm if they relocated to Mexico to live with him. The country conditions submitted, and a review of the current U.S. Department of State (DOS) Travel Warning for Mexico, reflect that

crime and violence are serious problems and can occur anywhere in Mexico. *See* U.S. Department of State, Bureau of Consular Affairs, *Travel Warning, Mexico* (April 22, 2011), http://travel.state.gov/travel/cis_pa_tw/tw/tw_5440.html. The Travel Warning stresses that safety and security concerns are especially pronounced in the northern border region of Mexico. The Travel Warning individually addresses Mexican States and regions that face particular safety and security concerns. Notably, the State of Oaxaca, where the applicant lives, is not contained on the list. The 2008 and 2009 country conditions information submitted by the applicant also contains no specific references or discussion of conditions in Oaxaca, Mexico.

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(i) and 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.