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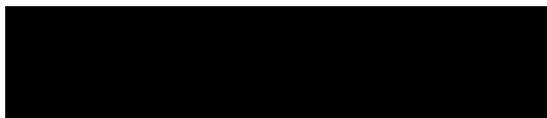
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Date: **JUL 08 2011**

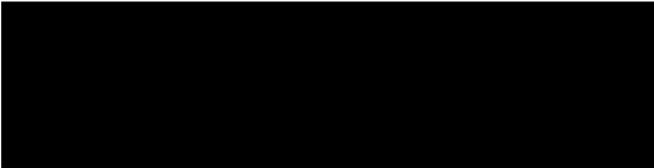
Office: CLEVELAND, OHIO

FILE: 

IN RE: Applicant: 

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

Pr

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for two periods of time, each more than 180 days but less than one year, and again seeking admission within three years of his last departure from the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

In a decision dated December 7, 2008, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated December 7, 2008.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserted that the qualifying spouse would encounter emotional, psychological and medical hardships as a result of her separation from the applicant. Moreover, the applicant's attorney also indicates that the qualifying spouse has close family ties to the United States and cannot relocate to Mexico because she has debts and obligations in the United States. The qualifying spouse is a nurse, and the applicant's attorney contends that she will be unable to find a job in Mexico because she does not speak Spanish and because of the economic conditions in Mexico. Further, the applicant's attorney contends that the applicant's health would be in jeopardy in Mexico.

The record contains an approved Petition for Alien Relative (Form I-130); an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal (Form I-290B); briefs from the applicant's attorney; information from the internet regarding depression, adjustment disorder, post traumatic stress disorder, obesity, obsessive compulsive disorder, codependency, Prozac, and Restoril; the qualifying spouse and applicant's marriage license and other records relating to their marriage; letters from the qualifying spouse's and applicant's employers; birth certificates for the applicant and the qualifying spouse; copies from the applicant's passport and of his departure record; an affidavit from the qualifying spouse and her mother; two psychological assessments; medical records; documents relating to two properties and a list of expenses; financial documentation; documents relating to the qualifying spouse's school and tuition; letters from friends and family; country condition materials; and evidence submitted in conjunction with the Application to Adjust Status (Form I-485).

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

(B) Aliens Unlawfully Present.-

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

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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 sections 212(i) and 212(a)(9)(B)(v) 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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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-I-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 indicates that the applicant entered the United States without inspection in March 2005 and remained until December 2005 when he voluntarily departed. The applicant also accrued unlawful presence after his H2A visa expired on January 2, 2007 until July 19, 2007, the date the applicant filed his adjustment of status application. Moreover, in applying for his H2A visa, the applicant failed to disclose that he had been unlawfully present, thereby procuring his visa through misrepresentation or fraud. The applicant has not disputed his inadmissibility. Therefore, as a result of the applicant's unlawful presence and prior misrepresentation, he is inadmissible to the United States under sections 212(a)(9)(B)(i)(I) and 212(a)(6)(C)(i) of the Act.

The documentation submitted relating to the potential hardships facing the applicant's spouse includes Form I-601, Form I-290B, briefs from the applicant's attorney, letters from the qualifying spouse's and applicant's employers, an affidavit from the qualifying spouse and her mother, two psychological assessments, medical records, financial documentation, documents relating to the qualifying spouse's school and tuition, letters from friends and family, country condition materials and evidence submitted with Form I-485.

As previously stated, the applicant's attorney asserted that the qualifying spouse would encounter emotional, psychological and medical hardships as a result of her separation from the applicant. Moreover, the applicant's attorney also indicates that the qualifying spouse has close family ties to the United States and cannot relocate to Mexico because she has debts and obligations in the United States. The qualifying spouse is a nurse, and the applicant's attorney contends that she will be unable to find a job in Mexico because of her inability to speak Spanish and the economic conditions in Mexico. Further, the applicant's attorney asserts that the applicant's health would be in jeopardy in Mexico.

The applicant's attorney asserts that the qualifying spouse would encounter emotional, psychological and medical hardships as a result of her separation from the applicant. With respect to the qualifying

spouse's emotional and psychological hardships, the record contained two psychological assessments demonstrating that the qualifying spouse has great difficulty dealing with stress, depression and anxiety relating to the possible removal of the applicant. Both evaluations diagnosed the qualifying spouse with Major Depressive Disorder. She was also prescribed medications for her severe depression and other psychological issues. In addition, the record contains letters from the qualifying spouse, her mother, and other family members and friends confirming that it will be very difficult for the qualifying spouse to function without the applicant. These letters also indicate that the qualifying spouse has had a history of psychological and emotional issues, including a history of depression and an attempted suicide at a young age. The letters also state that the qualifying spouse has suffered from adjustment disorder, codependency, obsessive compulsive disorder and post traumatic stress disorder after a miscarriage. With regard to the qualifying spouse's medical hardships, the record contains medical documentation including notes from doctors, computer printouts and emergency room records regarding various medical issues that the qualifying spouse has had in the past few years. While we agree with the Field Office Director that the applicant did not demonstrate that the qualifying spouse has any current medical issues from her past documented medical problems, the psychological assessments and the letters from family members demonstrate that her past medical problems have contributed greatly to her current depression and emotional problems.

The applicant's attorney also asserts that the qualifying spouse has close family ties in the United States, and has provided letters from family and friends demonstrating these relationships. In particular, the letter from the qualifying spouse's mother illustrates the closeness of the relationship between the qualifying spouse and her mother, and the qualifying spouse's reliance upon her mother for emotional and psychological support. In addition, the qualifying spouse was born in the United States, and it may be difficult for her to adjust to a new language and culture, especially considering her past issues with adjustment disorder.

The applicant's attorney also states that the qualifying spouse cannot relocate to Mexico because she has debts and obligations in the United States. The attorney specifically discusses properties and student loan debt incurred by the qualifying spouse. The record contains a document relating to two properties. We agree with the Field Office Director's analysis of her debt and find that the amount of debt incurred by the qualifying spouse is minimal. However, it is still one factor to consider with regard to the qualifying spouse's aggregated hardship.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's United States citizen spouse would face if the applicant is not granted this waiver, the applicant's ties to the United States, as documented by letters in support of the waiver application, and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States and his misrepresentations.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.