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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**



115



Date: **JUL 25 2011**

Office: SALT LAKE CITY, UT

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Salt Lake City, Utah. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico who 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), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated September 25, 2008.

On appeal, counsel contends the applicant did not commit the alleged fraud and is, therefore, not inadmissible. Specifically, counsel claims the applicant presented a valid and legitimate Mexican social security document, known as a [REDACTED]. Counsel submits documents from the Mexican social security administration to support this contention. Alternatively, counsel contends that even if the applicant is inadmissible, she established extreme hardship to her U.S. citizen husband, particularly considering that their two daughters both suffer from learning and behavioral disorders and the applicant's husband is depressed and has "cognitive limitations."

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on May 24, 1997; letters and affidavits from the applicant; a letter from Mr. [REDACTED]; a psychological evaluation; several letters of support; copies of the applicant's medical records; a letter from Mr. [REDACTED] employer; tax and other financial documents; numerous articles addressing conditions in Mexico; documents from the Mexican Institute of Social Security; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

In this case, the record shows that the applicant attempted to obtain a border crossing card in June of 1999. According to the applicant, she went with her parents and three of her siblings “to exchange [her] local passport for a laser visa.” She contends that because she was born in Tijuana and “was a resident of the border, [she] always had a visa to cross into the United States.” The applicant contends that “the whole time [she] kept [her] permit current, so [she] could be legally in the United States.” The applicant contends that the consular officer “asked [her] for [her] birth certificate, [her] voter card, [her] local passport, which still had 9 years before it expired, and the pink Social Security paper.” The applicant contends that the consular officer told her that the stamp on the pink paper was false and ultimately cut up her passport with scissors. *Affidavit of* [REDACTED] dated November 25, 2008; *Letter from* [REDACTED], dated February 2, 2007.

Notes from the applicant’s adjustment of status interview indicate that the applicant re-entered the United States on January 6, 2000, by making a false claim to U.S. citizenship. The AAO issued a Request for Evidence on March 25, 2011, asking that the applicant submit a notarized affidavit providing details regarding her January 2000 entry into the United States. In response to the Request for Evidence, the applicant submitted an affidavit conceding that she re-entered the United States illegally on January 6, 2000. However, the applicant contends she never claimed she was a U.S. citizen. Rather, the applicant contends she entered the country at the San Ysidro point of entry with her father, a family friend, and her sister-in-law, her husband, and their child. According to the applicant, everyone had a visitor’s visa except for her. She states that her father handed the immigration officer everyone’s documents and that the officer did not look through them, telling them just to pass through. *Affidavit of* [REDACTED] dated June 23, 2011.

The AAO finds the applicant’s explanation plausible and, therefore, finds that the applicant is not inadmissible for making a false claim to U.S. citizenship. Regardless, the applicant remains inadmissible for willful misrepresentation of a material fact, as explained below.

The applicant contends she is not inadmissible for misrepresenting a material fact because, according to the applicant, the pink social security paper was, in fact, valid. To support her contention, the applicant has submitted documents from the Mexican social security office as well as three letters from the General Attorney of Justice of the State of Baja California which state that the applicant’s local passport, federal voter ID card, and state voter ID card were lost on September 17, 1996.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds that the applicant’s contention that she is not inadmissible to be unpersuasive. The letters from the Mexican social security office indicate only that the applicant worked in Mexico for four weeks in 1988, 33 weeks in 1993, and 33 weeks from 1994 until February 1995. *Letter from Mexican Institute of Social Security*, dated November 18, 2008; *see also Translation of Affiliation Number to Mexican Social Security, 1994, 1993, and 1998*. The letters from the General Attorney of Justice of the State of Baja California state only that the applicant’s local passport, federal voter ID card, and state voter ID card were lost. There is no contention that any of these documents were the actual documents the applicant submitted to the consular officer in 1999 and, therefore, these documents are not directly probative in determining whether or not the applicant submitted any false or fraudulent document to the consular officer. Even assuming these are valid documents that were submitted to the consular officer, the documents do not contain any employment information after 1995. The consular officer would reasonably question whether the applicant was employed in Mexico between 1995 and 1999.

In any event, the applicant misrepresented her intent to merely visit the United States. According to the U.S. Department of State, citizens of Mexico may be issued border crossing cards only if they meet the eligibility standards for B1/B2 visitor’s visas and demonstrate that they have ties to Mexico that would compel them to return after a temporary stay in the United States. Applicants must demonstrate, *inter alia*, that the purpose of their trip is for business, pleasure, or medical treatment, that they plan to remain for a specific, limited period, that they have a residence outside of the United States, and that they have binding ties that will insure their return abroad at the end of their visit.

The Department of State Foreign Affairs Manual states that, “[i]n determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application or to an immigration officer when applying for admission. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, . . . [a]pply for adjustment of status to permanent resident. . . .” *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1). The Foreign Affairs Manual further states that a misrepresentation may have been made when “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry (POE), that the

purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by . . . taking up permanent residence. . . .” *Id.* at § 40.63 N4.7-1(3).

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant married her husband in May 1997. According to her husband, he has lived in the United States since 1986. The applicant’s Biographic Information form and her Form I-601 state that she lived in the United States from May 1997 until June 1999. The applicant states that in June 1997, she went to live in Los Angeles with her husband and they “constantly went to Tijuana to visit [her] family.” *Affidavit of* [REDACTED] dated November 25, 2008. Based on this information, the AAO finds that the applicant was not a visitor, but an intending immigrant.

The AAO notes that the applicant contends she was with her parents and siblings when she tried to obtain a border crossing card in June of 1999. The applicant does not address whether or not she informed the consular officer that she was married to a man who lived in the United States. If she failed to disclose her marriage or misrepresented her marital status, she has also misrepresented this material fact.

The AAO finds that the applicant has not met her burden in proving her eligibility for admission to the United States. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is eligible for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

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.

In this case, the applicant’s husband, Mr. [REDACTED], states that he left Mexico in 1986 in order to have a better life. Mr. [REDACTED] states that the economy in Mexico is so hard that he does not think he can find a job in order to provide for his family. He states he only has two family members remaining in Mexico and they have a difficult time surviving. In addition, Mr. [REDACTED] contends his wife is from Tijuana, which is full of drug dealers and criminals, and that most of the companies in Tijuana only want to hire people younger than thirty-five years old. He states his two daughters have never been outside of the United States, not even for a day. *Letter from [REDACTED]*, dated November 14, 2008.

The applicant states that her husband would suffer extreme hardship due to the unsafe conditions and poor economic situation in Mexico. She states that her husband’s morale would suffer if he had to see all of his sacrifice over the past twenty-two years “just crumble” if he had to return to Mexico. According to the applicant, her husband would have a very hard time finding a job in Mexico because he is older than thirty-five years old. In addition, the applicant states that people in Mexico know that

she and her family have been living in the United States. She states that in 1996, she was assaulted by a man at gunpoint and she fears returning to Mexico, particularly with her daughters who could be kidnapped for ransom. She contends that their daughters have a right to grow up in the United States. *Affidavit of [REDACTED], supra.*

A psychological evaluation states that Mr. [REDACTED] has clinically severe depression and would suffer severe psychological trauma if his wife's waiver application were denied. According to the psychologist, Mr. [REDACTED] had difficulty recalling dates and times frames of important life events and had to check with his wife to help him remember things. The psychologist states that Mr. [REDACTED] writing was filled with spelling and grammatical mistakes to an extent that his writing ability was lower than expected from his reported educational level. The psychologist concludes that Mr. [REDACTED] may have cognitive deficits. In addition, the psychologist states that the couple's two-year old daughter, Paris, "showed definite signs of hyperactivity and of communication disorder." According to the psychologist, the applicant and her husband "had to chase after her so that she would not run out of the office [in]to the street. She got into everything [s]he could, every time she could[, and h]er speech production is clearly impaired." The psychologist concludes that Paris will likely require speech therapy, special education, and possibly medications in the future. Moreover, the psychologist states that the couple's almost seven-year old daughter, [REDACTED] has reading problems and deficits in both English and in Spanish. The psychologist notes that [REDACTED] is receiving special services at school to address her problems. *Psychological Evaluation*, dated November 14, 2008.

Upon a complete review of the record evidence, the AAO finds that Mr. [REDACTED] would suffer extreme hardship if the applicant's waiver application were denied. Mr. [REDACTED] who is currently forty-seven years old, has lived in the United States since 1986. According to the psychological evaluation in the record, Mr. [REDACTED] suffers from severe depression and may have cognitive deficits. In addition, the psychologist found that the couple's two daughters have special needs. The psychologist found that Paris "has definite signs of hyperactivity and communication disorder. As such, she is going to require specialized attention over the years." *Psychological Evaluation, supra.* Likewise, the psychologist noted that Valeria's teachers have noted reading problems and that she is already receiving special services in school. Moreover, the applicant has not worked while living in the United States and is the children's primary care taker while her husband works. If Mr. [REDACTED] were to remain in the United States without his wife and his daughters remained in the United States, he would need to find full-time care for them, a particularly difficult situation considering their special needs. If his daughters moved to Mexico with his wife, he would suffer emotional harm due to concerns about their well-being and safety in Mexico, a concern that is beyond the common results of removal or inadmissibility given his daughters' special needs.

The AAO also finds that if Mr. [REDACTED] had to move back to Mexico to be with his wife, he would experience extreme hardship. According to the psychological evaluation, Mr. [REDACTED] has a child from a previous marriage for whom he provides ongoing financial support. Moreover, Mr. [REDACTED] has been employed by a catering service since February 1987 and became a co-owner of the business in 1999. *Letter from [REDACTED] dated June 19, 2006.* Furthermore, as articles in the record show, and the U.S. Department of State recognizes, crime and violence are serious problems in Mexico, particularly along

the border cities, including Tijuana. *U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011. Mr. [REDACTED] would need to readjust to a life in Mexico after having lived in the United States for the past twenty-five years, a difficult situation made even more complicated given the couple has two U.S. citizen daughters who, according to Mr. [REDACTED] have never been outside the United States and have special needs. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and the applicant's two subsequent illegal entries into the United States. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband and two children; the extreme hardship to the applicant's husband and children if she were refused admission; letters of support that describe the applicant as being an honest person with good moral character; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when 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.

ORDER: The appeal is sustained.