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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

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[REDACTED]

HS

DATE: **JUL 29 2011**

Office: ALBUQUERQUE

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Albuquerque, New Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record establishes that the applicant, a native and citizen of Mexico, admitted under oath to having utilized his Border Crossing Card on multiple occasions between 2002 and 2006 to enter the United States and resume living and working in the United States, with the knowledge that a Border Crossing Card does not permit residence or employment in the United States. *Record of Sworn Statement*, dated February 25, 2009. The applicant was thus 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 entry to the United States by fraud or willful misrepresentation.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse, child, and step-child.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 20, 2009.

On appeal, counsel for the applicant submitted the following *inter alia*: a brief, dated June 18, 2009; an Outpatient Psychiatric Evaluation, dated June 11, 2009; a letter from [REDACTED] dated May 20, 2009; affidavits from friends and family members; financial and employment documentation; criminal records pertaining to the applicant's spouse's former boyfriend; and a deterioration of service memorandum pertaining to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

Section 212(i) of the Act provides:

- (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 the applicant and/or the children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 U.S. citizen spouse contends that she will suffer extreme emotional and financial hardship were she to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration she explains that her previous boyfriend, [REDACTED], [REDACTED], abused her for years, and since the applicant moved in with her he has protected her. She states that she would be fearful that [REDACTED] would hurt her again were the applicant to relocate abroad. She further notes that her husband is the love of her life and due to her husband’s inadmissibility, her work has deteriorated to the point that her work is being highly scrutinized and she is at risk of termination. The applicant’s spouse also contends that her children are very close to the applicant and were he to relocate abroad, they, and by extension she, would experience extreme hardship. Finally, the applicant’s spouse explains that she relies on her husband for financial contributions but were he to relocate abroad, she would become primary financial provider to her two young children and such a predicament would cause her hardship. *Affidavit of [REDACTED]*, dated March 31, 2009.

In support of the emotional hardship referenced, an Outpatient Psychiatric Evaluation has been provided by [REDACTED] confirms that the applicant's spouse has developed Major Depressive Disorder and has symptoms of Post Traumatic Stress Disorder based on her

relationship with her previous boyfriend, [REDACTED]. He notes that the applicant's spouse is getting counseling from [REDACTED] who specializes in the treatment of Post-Traumatic Stress Disorder. [REDACTED] concludes that were the applicant to relocate abroad, the applicant's spouse would require treatment with medications and perhaps psychiatric hospitalization to prevent suicide. Moreover, [REDACTED] notes that it would be prudent that the applicant's spouse establish an ongoing relationship with a therapist and at least have access to a psychiatrist who can prescribe medications. *Outpatient Psychiatric Evaluation from [REDACTED] dated June 11, 2009.* In addition, two letters have been provided from [REDACTED]. [REDACTED] confirms that the applicant's spouse is displaying symptoms of increasing depression including disruption in cognitive functioning. [REDACTED] also explains that the applicant's spouse has an [REDACTED] diagnosis of Post Traumatic Stress Disorder as a result of previous domestic violence. *Letters from [REDACTED] [REDACTED] dated March 11, 2009 and May 20, 2009.* Moreover, letters in support have been provided from friends and family members establishing the applicant's spouse's past trauma in the hands of [REDACTED] and noting that they fear that [REDACTED] will attempt to hurt the applicant's spouse once he knows the applicant is not residing in the United States. *Affidavit of [REDACTED] [REDACTED] dated May 20, 2009, Affidavit of [REDACTED] [REDACTED] dated May 22, 2009, Affidavit of [REDACTED] [REDACTED] dated March 31, 2009, Affidavit of [REDACTED] [REDACTED], dated March 21, 2009, Affidavit of [REDACTED] [REDACTED] dated March 31, 2009, and Affidavit of [REDACTED] [REDACTED], dated March 31, 2009.* Documentation establishing [REDACTED] extensive criminal record has also been provided by counsel. Finally, a letter has been provided from the applicant's spouse's employer, confirming that the accuracy and quality of her work started showing signs of deterioration in February 2009 and consequently, she will be highly scrutinized to insure that she is once again delivering the high quality service expected of her. *Letter from [REDACTED] [REDACTED] dated March 18, 2009.*

As for the financial hardship referenced by the applicant's spouse, a letter has been provided from the applicant's spouse's parents confirming that although they are co-borrowers on the applicant's spouse's mortgage as she was only 17 years of age when she obtained the mortgage, they have never made a payment on the mortgage as they are financially incapable of doing so. *Letter from [REDACTED] and [REDACTED].* In addition, the record establishes the applicant's gainful employment as an [REDACTED] in Albuquerque, New Mexico, since March 2002.

The record reflects that the cumulative effect of the emotional and financial hardships the applicant's spouse will experience due to her husband's inadmissibly rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

With respect to relocating abroad, [REDACTED] notes that the applicant's spouse was born and raised in Albuquerque, New Mexico and has no ties to Mexico. In addition, [REDACTED] explains that the applicant's spouse has been ordered by the court to make her six year old son available for visitation with [REDACTED] and his family and thus, she is unable to leave the country with him. [REDACTED] further references the problematic country conditions in Ciudad Juarez, Mexico, where the

applicant's parents reside, including disappearances, murders and drug activity. Finally, [REDACTED] explains that the applicant's spouse has been gainfully employed since 2003 with New Mexico Educators Federal Credit Union and a relocation would cause her professional disruption and financial hardship which may lead to the foreclosure of her home. *Supra* at 3-4. The applicant himself references his concerns with his wife relocating to Mexico due to the drug related violence in Mexico. *See Form I-290B, Notice of Appeal*, dated May 21, 2009.

The record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Mexico. She would have to leave her family, most notably her parents and five siblings, her long-term gainful employment as Lead Teller, her home and her community. Finally, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico specifically referencing Ciudad Juarez, where the applicant's parents reside.²

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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

² As noted by the U.S. Department of State:

The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has the highest murder rate in Mexico. Mexican authorities report that more than 3,100 people were killed in Ciudad Juarez in 2010. Three persons associated with the Consulate General were murdered in March, 2010. You should defer non-essential travel to Ciudad Juarez and to the Guadalupe Bravo area southeast of Ciudad Juarez. U.S. citizens should also defer non-essential travel to the northwest quarter of the state of Chihuahua. From the United States, these areas are often reached through the Columbus, NM, and Fabens and Fort Hancock, TX, ports-of-entry. In both areas, U.S. citizens have been victims of narcotics-related violence. There have been incidents of narcotics-related violence in the vicinity of the Copper Canyon in Chihuahua.

Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.

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-Moralez, 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 favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; support letters from family members and friends and gainful employment. The unfavorable factors in this matter are the applicant's misrepresentation when procuring entry to the United States with his Border Crossing Card and periods of unauthorized presence and employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.