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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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Date: **MAY 16 2011** Office: MILWAUKEE, WI

FILE: [REDACTED]

IN RE: [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]

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,

*for* Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin 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 was 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 admission into the United States by fraud or willful misrepresentation on February 19, 2005. 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 a decision, dated May 8, 2008, the field office director found that on December 5, 2007, during his adjustment interview, the applicant stated that on February 19, 2005, at the Laredo, Texas port of entry he presented his Mexican passport and B2 Visitor's Visa to enter the United States. The applicant stated that he told the immigration officer at the Laredo port of entry that he was entering the United States to visit when, in fact, he had been residing and working in the United States since November 2004. The field office director then found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant's spouse would not suffer hardship rising to the level of extreme as a result of the applicant's inadmissibility from the United States. She also found that any hardships suffered by the applicant's spouse did not outweigh the severity of the immigration law violation in the applicant's case. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated June 5, 2008, counsel states that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility because of her extremely close relationship to the applicant and also to her father. She states that these relationships are critical for the applicant's spouse as she lost her mother when she was sixteen years old. Counsel submits the 2007 U.S. Department of State Human Rights Report for Mexico as evidence that country conditions are a danger for U.S. citizens.

The AAO notes that the applicant was arrested and charged with 2<sup>nd</sup> degree sexual assault/unconscious victim and burglary of a building or dwelling. However, the record indicates that on September 21, 2006 these charges were dismissed. In addition, the record indicates that in September 2006 the applicant was convicted of driving while intoxicated. The AAO notes that in *In Re Lopez-Meza* the Board of Immigration Appeals held that a single simple DWI offense is not a crime involving moral turpitude. *In Re Lopez-Meza, Id.* 3423 (BIA Dec. 21, 1999). *See also, Matter of Torres-Varela*, 23 I. & N. Dec. 78 (BIA 2001).

In regards to the applicant's misrepresentation upon his February 19, 2005 entry into the United States, the record indicates that on December 5, 2007, during his adjustment interview, the applicant affirmed the immigration officer's statement that he had worked in the United States prior to this entry. The AAO notes that the applicant's Biographic Information Sheet (Form G-325A), submitted with his Application to Register Permanent Residence, dated March 26, 2007, states that the applicant has been working on and off in the United States since November 2004. The applicant states that he entered the United States on September 5, 2004 and from then until January 2005 he and his spouse travelled to various places in Wisconsin. In his statement, dated July 2, 2008, the applicant states that although he had worked in the United States it was not his intention to reside in

the United States and that he was only traveling back and forth from the United States to Mexico to be with his spouse until she finished her schooling. He states that during this time he helped the owner of the Tequila's Mexican Restaurant for a couple hours each morning without being paid. The AAO notes that this information contradicts the information provided on the applicant's Form G-325A. Moreover, the record also indicates that immediately after entering the United States on February 19, 2005, the applicant continued to work in the United States. The AAO notes further that 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 record does not contain independent evidence to reconcile these inconsistencies.

The Department of State Foreign Affairs Manual states that, "in 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. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident or fail to maintain their nonimmigrant status (for example, by engaging in employment without authorization...)." *DOS Foreign Affairs Manual*, § 40.63 N4.7(a).

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Actively seeking unauthorized employment and then engaging in that employment." *Id.* at § 40.63 N4.7-1(3).

Under this rule, "when violative conduct occurs within 30 days after entry into the United States, the Department may presume that the applicant misrepresented his or her intention in seeking a visa or entry." *Id.* at § 40.63 N4.7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its' analysis in these situations to be persuasive. In the applicant's case, he began work immediately after entering the United States in February 2005. The AAO finds that based on these facts and the absence of independent, objective evidence to overcome the presumption of misrepresentation under Department of State Foreign Affairs Manual, § 40.63 N4.7-2, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that:

- (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 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S.*

*v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record of hardship includes: counsel’s brief, affidavits from the applicant and his spouse; 2007 federal income tax return for the applicant and his spouse; a letter from the applicant’s spouse’s employer; financial documentation showing the applicant’s spouse’s ties to the United States; documentation regarding the applicant’s spouse’s education; affidavits from the applicant’s family members; photographs of the applicant and his spouse; numerous reports regarding country conditions in Mexico; and reports regarding the status of teachers in Mexico.

In her brief, counsel outlines the applicant’s circumstance in regards to his inadmissibility. She states that the applicant has parents and a younger sister who reside in Mexico with aunts, uncles, and cousins residing in Illinois and Texas. Counsel states that the applicant’s spouse has no family ties to Mexico and asserts that the violence in Mexico is both terrifying and unprecedented. Counsel submits the U.S. Department of State Travel Warning as well as other articles regarding conditions in Mexico in support of her statements. Counsel states further that in 2004 the applicant’s spouse was the victim of sexual assault while she was living in Mexico City and that she would not feel safe relocating to Mexico. She states that the applicant’s spouse has lived in Wisconsin almost her entire life, her support group of family and friends resides in Wisconsin, and it would be extreme hardship for her to leave.

Counsel states further that the applicant's spouse would not be able to find employment in Mexico as a teacher because the profession is tightly controlled by the teacher's union. Counsel also expresses concern over the incidents of violence against children in Mexican schools, the low quality of teachers, and the poor conditions of school buildings. Counsel asserts that leaving her current employer where she has been identified as a leader in her field would be a detriment to her professional and personal development.

Counsel states that the applicant provides financial support to his spouse, who earns \$34,000 per year as an elementary school teacher. Counsel states that the applicant's spouse is pursuing her master's degree and PhD in urban education, which she would not be able to afford if she relocated to Mexico. Counsel also states that the applicant's spouse would be unable to afford frequent flights to Mexico to visit the applicant and the applicant may be unable to find employment sufficient to support himself and his spouse in Mexico.

In her brief, counsel also expresses concern over the applicant's spouse's ability to run outside for exercise five times per week in Mexico City due to crime and air pollution. Finally, counsel states that the applicant's spouse relies on the applicant for daily love, presence, and emotional support.

In her affidavit, dated June 17, 2008, the applicant's spouse states that she has been working as a third grade elementary school teacher in Milwaukee, Wisconsin for the past two years and that she is involved in her local community as a basketball coach, homework program coordinator, and teacher's union representative. The applicant's spouse states that she received a grant to study in Argentina in June and July of 2008 and that she will be traveling to Argentina during this time period. She states that she is also enrolled in a Master's degree program and hopes to obtain her doctorate degree in five to seven years in Urban Education. In her affidavit, the applicant's spouse states that she met the applicant while studying in Mexico in 2002, that the applicant was living in Mexico City with his parents at the time, and that after meeting his family she felt that she wanted to be part of his family. The applicant's spouse then states that in 2004 she returned to Mexico to study for a semester at the same university as the applicant. The applicant's spouse states that from June 2004 until February 2005 she and the applicant travelled back and forth from Mexico to the United States. She states that on February 19, 2005 they entered the United States and started to reside in Wisconsin. She states that in 2006 she graduated from the University of Wisconsin with a bachelor's of science degree in sociology and Spanish.

In this affidavit, the applicant's spouse also states that she had a difficult childhood because her mother suffered from manic depression, abused medications and alcohol, and died of breast cancer when she was in high school. She states that her parents were separated and during the last four years of her mother's life she cared for her. She states that she and her mother were very close and her death left her feeling lost, insecure, and confused.

In regards to the hardships she will suffer as a result of the applicant's inadmissibility, the applicant's spouse states that all of her family and friends live in the United States and that she sees her brother and father twice monthly. She also states that after living in Mexico City for almost a year she feels that she cannot reside there because of the petty theft, her past experience with a

sexual assault in Mexico City, and her inability to jog every morning because of fearing for her safety. She states that being separated from the applicant would be devastating and that it would be difficult for her to continue with her profession without the applicant's physical and emotional support. She states that to relocate to Mexico she would be giving up her job where she has a pension, retirement account, dental and vision insurance, and life insurance. She states that she does not believe she will be able to find employment in Mexico as a teacher because she will not have a work permit or a teacher's license.

In his affidavit, dated July 2, 2008, the applicant supports his spouse's assertions regarding how they met, her experiences during childhood, and her experiences in Mexico. He also expresses great concern over conditions in Mexico and he and his spouse's ability to find well paying jobs in Mexico.

The record includes a substantial amount of supporting documentation, including: documentation that the applicant's spouse owns a condominium in Wisconsin; that the applicant's spouse has numerous retirement plans through her employment; that she has life insurance and student loans; and letters from family members stating that the applicant's spouse will suffer hardship as a result of the applicant's inadmissibility.

The record also includes numerous country condition reports regarding Mexico. The AAO notes that this documentation indicates that Mexico is a developing country, with high unemployment, and highly unequal income distribution. The record contains numerous country reports and articles regarding the rise in drug-related violence in Mexico. The AAO notes that the rise of drug-related violence in Mexico is cause for concern, but these reports do not highlight Mexico City, where the applicant is from, as an area that has experienced an increase in violence. The U.S. Department of State Consular Information Sheet for Mexico does state that Americans in Mexico City have been victims of this rise in drug-related violence. The information sheet states that the most frequently reported crimes involving tourists in Mexico City are: taxi robbery, armed robbery, pick pocketing, and purse snatching. They recommend that individuals exercise caution and be aware of their surroundings when walking anywhere in the city. Finally, the record includes numerous articles regarding the teaching profession in Mexico. These articles indicate that the quality of teachers in Mexico is low, that the schools in Mexico spend less per student than in the United States, that violence against children is a problem in Mexico, and that the teacher's union in Mexico is the largest in Latin America and holds significant power.

The AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of his inadmissibility. Although counsel has submitted a substantial amount of documentation on conditions in Mexico, he has failed to establish that the applicant and his spouse, given their educational and professional backgrounds, would not be able to find employment and live safely in certain areas of Mexico, including Mexico City. The AAO notes that the applicant is from Mexico City, his immediate family members still live in Mexico City, the applicant's spouse has spent periods of her life living in Mexico City, and the applicant's spouse is fluent in Spanish. The AAO acknowledges that much of Mexico's population lives in poverty, but this fact alone does not establish that the applicant and his spouse would also live in poverty. The applicant's spouse is a highly educated teacher. Although the record indicates that the Mexican school system is in need of

reform, it does not indicate that a teacher with the credentials of the applicant's spouse could not find employment in Mexico City. Similarly, the applicant has some college-level education and work experience. The record does not establish that he would not be able to find employment in Mexico. The AAO acknowledges the unfortunate events that occurred while the applicant's spouse was residing in Mexico City, but we are not convinced that she is now fearful of living in Mexico City to such an extent that relocation would cause her extreme hardship. To the contrary, the record indicates that the applicant and his spouse continue to travel to Mexico. Finally, the AAO does acknowledge that violence in certain areas of Mexico is on the rise. However, as stated above, Mexico City is not one of the areas noted for experiencing the most recent surge in violence. Taking into consideration the applicant's spouse's fluency in Spanish, her familiarity with the country, her background and credentials as an educator, the applicant's background, and the applicant's family ties to Mexico, the AAO does not find that relocation would be extreme hardship.

In regards to separation, the applicant has failed to submit documentation to support the assertion that his spouse would suffer emotionally and financially in his absence. The record does not include financial documentation to show that the applicant's support is necessary for his spouse to attend school and further her career as a teacher. Moreover, the current documentation does not demonstrate that in the event of separation, the applicant's spouse would suffer emotional hardship rising to the level of extreme. The AAO recognizes the hardships faced by the applicant's spouse during her childhood, but the record does not establish a connection between these hardships and the hardships that may result from the applicant's inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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.