

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



115

DATE: **MAY 17 2011** OFFICE: LOS ANGELES, CA 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:



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, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and a 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 having sought a benefit under the Act through fraud or willful misrepresentation. She is the spouse of a U.S. citizen and the mother of two U.S. citizens. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated July 22, 2010.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) did not consider the hardships to the applicant's spouse in the aggregate, gave disproportionate weight to the applicant's single misrepresentation in its discretionary analysis and abused its discretion. *Attachment, Form I-290B, Notice of Appeal or Motion*, dated August 17, 2010.

The record of proceeding includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant and her spouse; country conditions information concerning Mexico; an employment letter from the applicant's spouse's employer; W-2 forms and earnings statements for the applicant's spouse; tax records for the years 1988 to 2009; documentation of the applicant's and her spouse's home ownership and mortgage payments; school records and certificates for the applicant's children; educational records for and certificates awarded to the applicant; letters from the pastors of the churches attended by the applicant and her children; and documentation submitted in support of the applicant's prior waiver and adjustment applications. The entire record was reviewed and all relevant evidence considered in a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **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 chapter is inadmissible.

The record reflects that the applicant has lived in the United States since 1988. On January 7, 1997, the applicant, having traveled to Mexico to visit her sick mother, attempted to reenter the United States using a B-2 visitor's visa. In that the applicant presented herself as a nonimmigrant visitor to a U.S. immigration inspector when she was, in fact, seeking to return to her unlawful residence in the United States, she is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking a benefit

under the Act through fraud or the willful misrepresentation of a material fact and must seek a section 212(i) waiver of inadmissibility.

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.

On appeal, counsel asserts that the Field Office Director misapplied case law by relying on cases that involve applicants who acquired equities in the United States while they were not in lawful status or whose equities were acquired after some adverse immigration action. He specifically notes the Field Office Director's reliance on *INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996); *Marquez-Medina v. INS*, 765 F.2d 673 (7<sup>th</sup> Cir. 1985); and *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) and distinguishes the facts in these cases from the applicant's. The AAO finds, however, that the Field Office Director did not cite the referenced cases for their individual holdings or fact patterns, but for the guidance they provide on what constitutes extreme hardship, the standard necessary to obtain a waiver of inadmissibility under section 212(i) of the Act. The AAO notes that U.S. courts and the Board of Immigration Appeals (BIA) have found it appropriate to reference suspension of deportation cases for their guidance on what constitutes extreme hardship. *Matter of Cervantes-Gonzalez*, 22 I & N Dec. 560, 565 (BIA 1999); *see also Hassan v. INS*, 927 F.2d 465, 467 (9<sup>th</sup> Cir. 1991) (noting that suspension of deportation cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(a) cases). Accordingly, counsel's assertions regarding the Field Office Director's misapplication of case law are not persuasive.<sup>1</sup>

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 or her children 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

---

<sup>1</sup> The AAO does, however, agree that the findings in *Silverman v. Rogers*, 437 F.2d 102 (1<sup>st</sup> Cir. 1970) are not relevant to the present matter as they address issues raised in the removal of an exchange visitor whose waiver request was made under section 212(e) of the Act.

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 BIA 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 BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of 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 BIA has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

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 BIA 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 a qualifying relative, 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel states that when the hardships the applicant's spouse would experience as a result of relocating to Mexico are considered in the aggregate, they "clearly tip the scale [past] the level of extreme hardship." He asserts that the applicant's spouse has lived in the United States since before 1982 and would lose all that he has invested in America. Counsel reports that the applicant's spouse has been employed since he arrived in the United States and that he would lose his position with the employer for whom he has worked since 1994. Counsel contends that the applicant's spouse would also suffer hardship as a result of seeing his U.S. children's futures compromised by a move to Mexico. He points to the current political and economic conditions in Mexico, as well as the violence created by Mexico's efforts to combat drug trafficking, as hardship factors that would affect the applicant's spouse. The applicant has reached a stage in his life, counsel asserts, when he no longer has the strength, stamina and will to build for the future.

In a June 16, 2010 statement, the applicant's spouse states that relocating to Mexico would significantly disrupt his life. He indicates that he has lived half of his life in the United States and has nothing to return to in Mexico. Moreover, he states, he has worked for the same employer since 1994 and has reached a position of responsibility and seniority. He asserts that it would be impossible for him to achieve this type of status again as he is too old. The applicant's spouse further contends that Mexico's economy is in crisis and that he fears that if his family moved to Mexico they would be exposed to the violence that has been created by the Mexican Government's attempts to eliminate the country's drug cartels.

The applicant's spouse also states that he could not bear to watch his children's educations and lives being compromised by moving to Mexico. He contends that his son, who currently attends college, would not be able to continue his education as his Spanish is merely conversational and that his daughter would be in an even worse situation as she cannot read, write or properly speak Spanish. The applicant's spouse also states that moving to Mexico would bring his dream of seeing his son finish college to an end as he would not be able to afford the costs. He further claims that requiring his children to leave their church activities behind would severely disrupt their lives and that he would suffer as a result of their distress. The applicant's spouse also states that a move to Mexico would result in the loss of the family's home, for which he sacrificed so much.

To support the preceding claims, the applicant has submitted an October 16, 2007 report, entitled "Mexico's Drug Cartels," prepared by the Congressional Research Service; a May 6, 2010 Department of State travel warning for Mexico; a March 12, 2010 letter from the Chief Executive Officer of the firm employing her spouse that indicates he is a sales manager; documentation establishing that she and her spouse own a home and must make monthly mortgage payments; school records for her children; and a July 7, 2004 letter from [REDACTED] regarding the Sunday School attendance of her children.

The AAO acknowledges the drug-related violence that is prevalent in certain areas of Mexico and notes that the Department of State's travel warning for Mexico was updated as of September 10, 2010 and remains in effect. Accordingly, we have considered whether the applicant's spouse would be at risk from such violence if he relocated to Mexico. Although neither counsel nor the applicant indicate where her spouse would reside if he relocated to Mexico, we note that the record reflects that the applicant and her spouse were both born in the Mexican state of Puebla and that the applicant resided in Puebla prior to moving to the United States. Accordingly, we have reviewed the Congressional Research Service's report on Mexican drug cartels, as well as the 2010 travel warning for Mexico, for information specific to Puebla. While neither report specifically identifies the State of Puebla as a site of drug cartel activity, we also observe that the Department of State's travel warning indicates that violence in Mexico is spread across the country.

The AAO has also considered counsel's and the applicant's spouse's claims that the economy of Mexico is in crisis and that he would not be able to find employment that would provide him with sufficient income to pay for his son's college education and his mortgage, or to meet his family's needs. The record does not, however, contain any documentary evidence to support these claims. The applicant has submitted no published country conditions reports on the Mexican economy relating to her spouse's employability in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse further claims that his 22-year-old son's and 11-year-old daughter's educations would be compromised by relocation as they do not speak Spanish well enough for them to attend school in Mexico and that their lives would be further disrupted by leaving their church. He asserts that he would suffer as a result of his children's hardships. Although, as previously discussed, the applicant's children are not qualifying relatives for the purposes of this proceeding, the AAO notes that in *Matter of Kao and Lin*, the BIA found that a 15-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. 23 I&N Dec. 45 (BIA 2001). While it is not clear whether the applicant's son is still in school, we acknowledge that her 11-year-old daughter's education and life would be significantly affected by the family's relocation to Mexico and note the concerns expressed in that regard by the applicant's spouse.

Having considered the preceding claims and the evidence of record, the AAO finds that when the applicant's spouse's age, his long-term residence and employment in the United States, the violence prevalent in Mexico, the impact of relocation on his young daughter, and the disruptions and difficulties normally created by relocation are considered in the aggregate, the applicant has established that her spouse would experience extreme hardship upon relocation.

In support of the applicant's claim that her spouse would suffer extreme hardship if her waiver application is denied and he remains in the United States, counsel states that the applicant's spouse has been able to focus on his career only because the applicant has had responsibility for their home and children. Counsel contends that if the applicant were to be removed from this "symbiotic exercise," it would not survive.

In his own statement, the applicant's spouse asserts that the applicant's presence at home has allowed him to concentrate on providing the family's income and to reach a position of responsibility at his place of employment. Without the applicant, he states, he could not work the hours necessary to support their household. The applicant's spouse further asserts that while he could not bear to be separated from the applicant and his children, he would not be able to work and care for his children if they remained in the United States. He contends that the only way he could meet his responsibilities as a single parent would be to quit his job and receive public assistance, and that he would probably lose his home as a result. The applicant's spouse states that without the applicant's support he would never have been able to purchase his family's home.

The applicant's spouse also contends that the applicant's belief in education has set an example for their children who have, as a result, done well in school. The applicant's spouse notes that his son is now in college, and that he wants his daughter to be able to benefit from the same support that the applicant previously provided their son. He also claims that the applicant's active participation in the life of their church has resulted in the active involvement of their children.

The record contains school records for the applicant's children that establish they are doing well in school and a March 10, 2010 letter from the applicant's pastor [REDACTED] that indicates she is actively involved in church activities. It further includes a Bank of America statement proving that the applicant and her spouse have a \$1,100 monthly mortgage payment on their home and tax returns demonstrating that the applicant is the only wage earner for the family.

As previously discussed, the AAO recognizes family separation as a factor in determining extreme hardship and gives considerable weight to the hardship of separation itself, particularly in cases involving the separation of spouses. *Salcido-Salcido*, 138 F.3d at 1293. In the present case, we note the applicant's marriage of more than 20 years and acknowledge the emotional hardship that would result from his permanent separation from his spouse. We further find the record to establish that the applicant's spouse has not previously been directly responsible for the day-to-day care and guidance of his children. In the absence of the applicant, he would become a single parent for his 11-year-old daughter who has never been separated from her mother, a role that would likely require significant

adjustments to his current employment. When these specific hardships are added to those that naturally result whenever a family is separated, the AAO finds the applicant to have demonstrated that her spouse would experience extreme hardship if her waiver application is denied and he remains in the United States.

The AAO additionally finds the applicant to merit a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 section 212(h)(1)(B) 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 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 adverse factor in the present case is the applicant's misrepresentation for which she now seeks a waiver and periods of unauthorized presence. The favorable factors in the present case are the applicant's family ties to the United States; the extreme hardship to her U.S. citizen spouse if she is denied a waiver of inadmissibility; the absence of a criminal record or any other offense; her efforts to better her life through education, as established by the school records and certificates found in the record; her active involvement in her church, as demonstrated by the letter from her pastor; and her attributes as a good wife and mother, as indicated by the statement from her spouse.

The AAO finds that the misrepresentation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal will be sustained.