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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: NOV 09 2011 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Applicant:

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,

Perry Rhew
Chief, Administrative Appeals Office

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

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 procuring an immigration benefit to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved *Petition for Alien Relative (Form I-130)*. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her lawful permanent resident spouse and her lawful permanent resident mother.

In a decision dated December 22, 2008, the Service Center Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Notice of Decision of the Service Center Director, December 22, 2008.*

Counsel for the applicant contends that the Service Center Director erred by applying a higher standard than the one set out in the statute, namely the “exceptional and extremely unusual hardship” standard, which was discussed in the Board of Immigration Appeals case, *Matter of Monreal*, 23 I&N Dec 56 (BIA 2001). Counsel further asserts that the Service Center Director erred in relying on *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), and that the Service Center Director erred in failing to consider some of the most pertinent cases used in determining whether extreme hardship exists, citing specifically the Board of Immigration Appeals case *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999)

The record contains the following documentation: a brief filed by the applicant’s attorney; letters from the applicant, applicant’s spouse, mother and children, and other reference letters; a report of psychological evaluation dated September 29, 2008; documentation regarding the schooling of the applicant’s children; financial documentation; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's husband and the applicant's mother are qualifying relatives 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 has resided in the United States since 1986, and currently lives with her lawful permanent resident spouse, her lawful permanent resident mother, and three children who are U.S. citizens.

The applicant’s mother, a qualifying relative, was born in 1927, and is a lawful permanent resident of the United States. According to the applicant’s counsel, the applicant’s mother suffers from many medical issues causing her to be dependent upon her family, particularly the applicant, for her day to day needs. The applicant’s counsel further states that the applicant’s mother cannot walk well alone, and needs someone to help her bathe, prepare meals, and to simply get around. See *Brief in Support of Appeal*, received February 20, 2009. The applicant’s mother suffers from hypertension with cardiac diastolic dysfunction, abnormal heart conduction defects, and osteoporosis. The applicant’s mother is also under the care of a cardiologist, See letter of [REDACTED] Internist, *Centro Medico*, dated September 23, 2008. [REDACTED] states in his letter that the applicant’s mother has always been accompanied by her daughter, the applicant. The applicant’s mother lives with the applicant and her family. The applicant’s mother states that the applicant is her primary caretaker, and that if the waiver is not granted, she will suffer extreme hardship because she cannot live without the applicant. See *Statement of* [REDACTED] dated September 25, 2008. The applicant’s brother states that his mother lives with the applicant, that she does not know how to read English and can hardly see, and that she cannot go out alone. The applicant’s brother states that his mother needs to go to the doctor every month, and feels more comfortable visiting the doctor with

another woman, the applicant. The applicant's brother also states that the applicant cares for their mother's personal hygiene. The applicant's brother states that it would not be possible for him to take care of his mother, and give his mother the same type of care and attention that the applicant is able to provide to their mother. *See Letter from [REDACTED]*, dated September 20, 2008. The applicant's daughter states that the applicant's mother has been living with the family for the past 17 or 18 years, that she has to go to the doctor very often because of her heart problems, that she needs to refill her prescriptions often, and that it is the applicant who makes sure that the applicant's mother has everything she needs. *See Statement of [REDACTED]* dated September 20, 2008. The applicant claimed her mother as a dependent on her 2007 Federal Income Tax Return.

As noted above, while hardships may not be extreme when considered individually, the Board of Immigration Appeals 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 applicant's mother has strong family ties to the United States, and has verified medical conditions that would cause hardship should the applicant's waiver not be granted. These hardships, when considered in the aggregate, are beyond the common results of removal or inadmissibility.

In addition, the record establishes that the applicant's mother would experience extreme hardship if she relocates to Mexico to be with the applicant. The applicant's mother is a lawful permanent resident who has been living in the United States since 1997. The applicant's mother is a widow, her three children all reside in the United States, and she has no close family ties in Mexico. In addition, the applicant's mother has medical conditions that require constant treatment and assistance with her daily activities, which the applicant provides.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her Lawful Permanent Resident mother 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. As extreme hardship to the applicant's mother has been established, it is not necessary to determine whether the applicant has established extreme hardship to her Lawful Permanent Resident spouse.

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 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, "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 hardships the applicant's Lawful Permanent Resident spouse and mother 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; letters of reference from relatives of the applicant; and the passage of more than ten years since the applicant's entry to the United States. The unfavorable factor in this matter is the applicant's misrepresentation of a material fact in a prior immigration filing, though the AAO takes note of the applicant's claim that she was a victim of notary fraud.

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 her 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.