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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services

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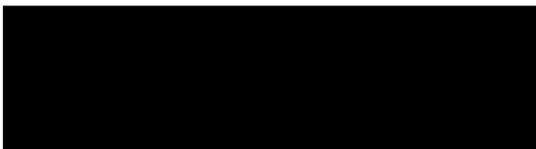
Date: NOV 18 2011

Office: MEXICO (CIUDAD JUAREZ) FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and § 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 District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

In a decision dated May 22, 2009, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated May 22, 2009.

On appeal, the applicant's attorney submitted a letter detailing the evidence provided in support of the applicant's waiver application. The applicant's attorney asserts that the qualifying relative will suffer emotional, psychological and financial hardships in the event that she continues to be separated from the applicant. Further, the applicant's attorney indicates that the qualifying spouse has close family ties in the United States, lacks any ties outside the United States and was born and has lived in the United States for over thirty years. The applicant's attorney also contends that the qualifying spouse would suffer financially upon relocation to Mexico, would lose her health insurance and would be unable to further her education.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal letter, a declaration and letters from the qualifying spouse, medical documentation regarding the qualifying relative, a psychological report regarding the qualifying relative, financial documentation, identification documents for the qualifying spouse's family, documentation related to the qualifying spouse's education, reference letters and photographs.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks

admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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:

- (1) The [Secretary] may, in the discretion of the [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 [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 sections 212(i) and 212(a)(9)(B)(v) 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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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.

In the present case, the record reflects that the applicant presented a fraudulent Mexican passport and visa to gain admission into the United States on November 1, 2009. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through fraud or misrepresentation. The applicant also accrued unlawful presence from his entry in 2000 until his departure in 2007, a period in excess of one year.<sup>1</sup> In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, as a result of the applicant's unlawful presence and prior misrepresentation, he is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act.

The applicant's qualifying relative is his wife, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an appeal letter, a declaration and letters from the qualifying spouse, medical documentation regarding the qualifying relative, a psychological report regarding the qualifying relative, financial documentation, identification documents for the qualifying spouse's family and documentation related to the qualifying spouse's education. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant's attorney asserts that the qualifying relative will suffer emotional, psychological and financial hardships in the event that she continues to be separated from the applicant. Further, the applicant's attorney indicates that the qualifying spouse has close family ties in the United States, lacks any ties outside the United States and was born and has lived in the United States for over thirty years. The applicant's attorney also contends that the qualifying spouse would suffer financially upon relocation to Mexico, would lose her health insurance and would be unable to further her education.

The AAO finds that the applicant has established that his qualifying spouse is suffering extreme hardship as a consequence of being separated from him. With regard to the emotional and psychological hardships, the record contains a psychological evaluation regarding the qualifying spouse and a declaration and letters from the qualifying spouse. The psychological evaluation reveals that the qualifying spouse attempted suicide twice, after having been a passenger in a traumatic car accident, which killed three of her friends. Moreover, the psychologist indicates that the qualifying spouse still has Post Traumatic Stress Disorder from the accident, and that other indicators, such as difficulty sleeping, isolation, nervousness, demonstrate her "suicidal ideation." Further, the psychologist states that the qualifying spouse is a "very needy person who could be a danger to herself." The psychologist notes that the qualifying spouse also has physical issues of poor self esteem and body image as a result of a steel plate that she now has in her face following her accident. The record also contains a newspaper article regarding the car accident and medical records that confirm the accident occurred. The qualifying spouse also indicates in her declaration and letters that she is struggling as a single mother of two small children. She states that her

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<sup>1</sup> The District Director's decision, dated May 22, 2009, indicates that the applicant also entered without inspection in 2004. However, the record indicates that he was found to have entered the United States in 2000 by the Consular Officer and does not establish a subsequent entry in 2004.

daughter is having a difficult time with the separation from the applicant, which is causing her depression.

With regard to the qualifying spouse's financial hardships, the record contains documentation of the qualifying spouse's earnings, including tax returns, earnings statements, expenses and a letter from her employer. The letter from the qualifying spouse's employer indicates that she is having difficulty with the separation from the applicant and that her position is in danger due to her poor work performance and attendance. Further, the qualifying spouse's income appears to be less than her expenses and debts. The qualifying spouse also contends that she is having a hard time supporting the applicant, and the record contains proof that she has sent money to the applicant. The evidence reflects that it is very difficult for the qualifying spouse to keep up with her expenses, including utilities, credit card bills and other expenses, and to also support her husband in Mexico and/or pay for childcare. In light of the qualifying spouse's emotional, psychological and financial hardships, the record reflects that the hardships facing the qualifying spouse in the United States without the presence of the applicant rises to the level of extreme.

The applicant has also demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Mexico. The qualifying spouse was born in and has lived her entire life in the United States. Her entire immediate family, including her brother, parents and children, and extended family members, live and have lawful status in the United States. The applicant's attorney also claims that the qualifying spouse has no family ties to Mexico, and the identification documents of the qualifying spouse's family members and her declaration and letters are consistent with such assertion. Furthermore, the applicant's attorney indicates that the qualifying spouse has a job as a social worker in the United States that provides health insurance. The record contains proof of her earnings and benefits, including earnings statements and a letter from her employer. The applicant's attorney states that the qualifying spouse would also lose her ability to continue her education. The applicant submitted proof of the qualifying spouse's interest in seeking additional education, a school application that she submitted and later cancelled. The AAO concludes the qualifying spouse would experience extreme hardship if she relocated to Mexico to accompany the applicant because of her close family ties to and her length of residence in the United States, and due to the potential financial hardships she would face in Mexico.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(i) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the qualifying spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, the applicant's support from the qualifying spouse and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's unlawful presence in the United States, his continued presence in the United States while he had an outstanding removal order and his subsequent attempt to reenter the United States using a fraudulent passport, which resulted in his removal from the United States on November 1, 2009.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

However, the AAO notes that, on December 21, 2002, the applicant received an order of removal and subsequently departed the United States in 2007. He was also removed under section 235(b)(1) of the Act on November 1, 2009, and is therefore inadmissible under Section 212(a)(9)(A) of the Act. As such, it is necessary that the applicant file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

**ORDER:** The appeal is sustained.