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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: OCT 24 2011

OFFICE: CHARLOTTE, NC

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).

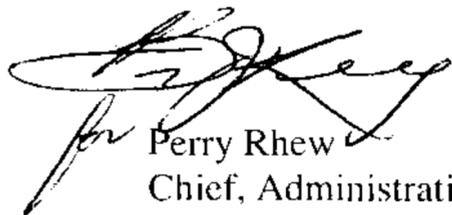
ON BEHALF OF APPLICANT:



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 Field Office Director, Charlotte, North Carolina, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

The record reflects that the applicant is a native and 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 to gain entry into the United States by fraud or willfully misrepresenting a material fact. The applicant is the spouse of a Lawful Permanent Resident of the United States. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 19, 2008.

On appeal, prior counsel for the applicant asserts that she has established extreme hardship to her Lawful Permanent Resident spouse. Counsel submits a brief and additional evidence. *See Form I-290B and counsel's brief and attachments.*

The record includes, but is not limited to, statements from the applicant, her spouse and two of her children describing the hardships claimed; a letter from the applicant's pastor; school records for the applicant's children; letters from the applicant's children's teachers; letters of support from relatives and friends of the applicant; income tax returns and W-2 Wage and Tax statements; statements from the applicant's and her spouse's employers; country conditions materials concerning Mexico; and former counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

The record indicates that on January 10, 1997, the applicant presented a fraudulent temporary Form I-551 in an attempt to gain entry into the United States. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to gain entry into the United States through fraud or willfully misrepresenting a material fact.

Section 212(i) of the Act provides, in pertinent part:

(i) (1) The Attorney General [now the Secretary of Homeland Security] may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 a VAWA self-petitioner, 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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s former counsel asserts that the applicant’s spouse depends on the applicant for emotional support and to care for their four children, particularly their infant daughter, and their home. He also states that separation will destroy their marriage because the applicant’s spouse would not be able to visit the applicant due to the financial costs of traveling to Mexico and because he cannot leave his job for extended periods. Former counsel also asserts that the applicant’s departure would negatively impact her three school-age children who are excellent students and, in turn, the applicant’s spouse would suffer if his children’s education and upbringing were adversely affected. Counsel states that the applicant’s spouse will be the sole breadwinner in the applicant’s absence and will be overburdened if he has to care for their four children, and, at the same time, work to maintain the family.

The applicant’s spouse asserts that he would suffer extreme hardship without the applicant. He states that he has depended “tremendously” on his wife of over 16 years. He also states that she cares for him and their children, cooks, does laundry, and cleans the home, and works to help with bills. The applicant’s spouse contends that separation would ruin his marriage as he would not be able to travel to Mexico frequently because he does not earn enough to afford vacations and does not

get much time off work. He also asserts that his older children are excellent students, that they are too young to care for each other, and that he works an afternoon shift and cannot supervise them.

The applicant asserts that her spouse will suffer extreme hardship without her. She states that her spouse needs her help caring for their three school-age children, and their infant child, and to care for the household. She also states that she has worked to help with the bills and that it would be extremely difficult for her spouse to work, maintain the home, and also manage the children and their homework. She reports that she and her spouse have been together for over 16 years and depend on each other. Letters from the applicant's oldest daughter and her son state that they need their mother to care for them and be with them while their father works.

The record indicates that the applicant's and her spouse's birth place is Zacatecas, Mexico, and these appear to be locations where the applicant's spouse and his family would potentially reside if he relocates to Mexico. Included in the record is an August 13, 2008, United States Department of State, Country Specific Information Report on Mexico that indicates violent crime, including kidnapping, criminal assault, and robbery is common in Mexico City and other large cities in Mexico; and an October 10, 2008, Worldbook, Mexico Country Brief indicates that Mexico faces challenges in fighting poverty which remains stagnant. It is noted that recently the United States Department of State, *Bureau of Consular Affairs*, warned against traveling along the U.S-Mexico border and also to parts of Zacatecas based on the rapid rise in drug violence and crime. See United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, April 22, 2011.

The record indicates that the applicant's spouse has a monthly salary of \$1,921, the equivalent of \$23,052 annually, which is slightly above \$22,350, the federal poverty guideline for a family of four and several thousand dollars below \$26,170, the guideline for a family of five (spouse and four children). Although the applicant indicates that she has four children (including a child that would be approximately 3 to 4 years of age by now), the record only documents the older three. As a result, we cannot determine whether in the applicant's absence the family would fall below the poverty guideline for a family of five as the record lacks the necessary documentation to establish that the applicant has four children. However, the record establishes that the family that is documented in the record (spouse and three children) would be \$700 above the poverty guideline. We will factor this information into our hardship analysis.

The AAO takes note of the added responsibilities that would fall upon the applicant's spouse in her absence, particularly those relating to the care of at least three children; the emotional effects of separation on the applicant's spouse who has been married to the applicant since 1992; the applicant's spouse's concerns for the safety of the applicant in Mexico; his financial concern with his income barely above the poverty guideline without the applicant's income; and the limited opportunity and resources the applicant's spouse would have to visit the applicant in Mexico.

The AAO finds that when these hardship factors are considered with the normal hardships created by separation, the record establishes extreme hardship.

Regarding relocation, former counsel asserts that the applicant's spouse would suffer extreme hardship in Mexico. Former counsel points to the poor economic conditions and the high level of unemployment in Mexico, and asserts that the applicant's spouse would not be able to obtain employment there and that he would not be able to support his family. Counsel also notes that the applicant's spouse has been living in the United States for over 23 years and has deep family and social ties here. He further contends that the applicant's spouse would be concerned about the impact of the poor social conditions and high levels of crime in Mexico on himself, his wife, and their children.

The AAO notes the applicant's residence in the United States for more than half his life and that his family members reside in the United States. Also, as noted above, the conditions in the State of Zacatecas where the applicant would likely relocate to in Mexico; and the applicant's spouse's concerns of the pronounced negative effect that moving to an unfamiliar educational system and being taught in a language which may not be his children's primary language would have on his children. Therefore, we find that these hardships when considered in the aggregate, together with the normal disruptions and difficulties created by relocation, would result in extreme hardship for the applicant's spouse.

It has thus been established that the applicant's spouse would suffer extreme hardship if he relocates to Mexico to reside with the applicant due to her inadmissibility. The applicant is, therefore, eligible for a waiver under section 212(i) of the Act. 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 Attorney General and pursuant to such terms, conditions and procedures as prescribed by regulation.

The favorable factors in this matter are the applicant's Lawful Permanent Resident spouse and her United States citizen children; the extreme hardship to the applicant's spouse if the waiver application is not approved; the absence of a criminal record on the part of the applicant; the various letters of support attesting to the applicant's character; her instrumental role in the upbringing of her children; and the letters from her pastor attesting to her involvement in the church and community. The unfavorable factors in this matter are the applicant's use of a fraudulent document to attempt to enter the United States for which she seeks a waiver, the periods of unlawful residence and unlawful employment.

While the AAO does not condone the applicant's actions, the AAO finds that the mitigating factors in the present case 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 under section 212(i), 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 met that burden. Accordingly, this

appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.