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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

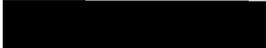
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Date: **SEP 02 2011**

Office: PORTLAND, OR

FILE: 

IN RE: Applicant 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 8, 2009.

On appeal, counsel contends the applicant established extreme hardship to her spouse, particularly considering the applicant's husband would abandon his lawful status if he moved to Mexico, the applicant's inadmissibility for misrepresentation would present a permanent bar from obtaining legal status in the United States, and the applicant's spouse fears regressing to alcoholism and a deep depression.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on March 27, 1997; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit from the applicant; an affidavit from [REDACTED] letters of support, including from family members; a psychological evaluation for [REDACTED] a letter from [REDACTED] physician; two letters from the couple's child's physician; a copy of the couple's child's Individualized Family Service Plan ("IFSP"); a copy of a report of fetal death; copies of pay stubs, tax records, bills, and other financial documents; two letters from [REDACTED] employer; a copy of the World Factbook for Mexico and other background materials; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes, that in 1995, she attempted to enter the United States using a fraudulent visa she purchased in Mexico. *Affidavit of* [REDACTED] dated October 10, 2007. The applicant was sent back to Mexico. The record further shows, and the applicant concedes, that she entered the United States without inspection in April of 1995 and again in April of 1998. *Brief in Support of Appeal*, dated June 8, 2009. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 this case, the applicant states that she and her husband grew up in the same village in Mexico and that they dated, but she broke up with him because he drank too much. The applicant contends that he changed for her and that she has not seen him drunk since she was sixteen years old. She states they have now been married for over ten years and have two sons together. The applicant contends that she worries about her husband because they lost a baby about four years ago and he has never fully recovered from the depression brought on from that loss. In addition, the applicant states that her son, [REDACTED] has severe allergies, cannot be in the sun for long, needs to shower for less than five minutes, and cannot play in the grass. She states that he gets a rash if he sweats too much and is allergic to many medications, including Advil. The applicant states she does not know if her husband could handle this situation on his own if the children stayed in the United States with him, and that she fears her son would be unable to receive proper medical treatment if he moved to Mexico. *Affidavit of* [REDACTED] [REDACTED] dated October 10, 2007. The record contains a copy of a Report of Fetal Death, showing that the couple lost a fetus in May of 2003. *Report of Fetal Death*, dated May 16, 2003.

The applicant’s husband [REDACTED] states that he comes from a poor family in a small village in Mexico and that his father left for the United States when he was two years old. [REDACTED] states that his father would visit, but that it could take up to two years between visits. He states it was very difficult not having his father in his life and that he felt abandoned when he was growing up. He contends he would see classmates with both of their parents and he would envy them. According to Mr.

██████████ he started working when he was eleven or twelve years old. He states that he thought if he worked long and hard enough, his father's burden would be lightened and he would be able to spend more time with the family. ██████████ states that he turned to alcohol to cope with his loneliness and frustration. He states that when he met the applicant when she was sixteen, he was impressed with her work ethic. He states she would iron clothes for people and sweep their houses. He states that he gave up his heavy drinking and smoking for the applicant, but that he moved to the United States with his family when he was eighteen years old. He states he was happy to be a family with his father again, but that he did not want to be apart from the applicant. In addition ██████████ states that their son, ██████████ suffers from severe atopic dermatitis which frequently causes skin infections. He states that they have to take him to the hospital when he is unable to tolerate the infections. Moreover, Mr. ██████████ states that his wife has done so much for him and that he has not been drunk since he was seventeen years old. He states he would be lost without her and that he fears he might slide into old habits, turning to alcohol to ease the pain. Furthermore, ██████████ states he would be unable to care for their children while working full-time. He contends he cannot afford daycare and fears that his children would have to relocate to Mexico with his wife. ██████████ states that his own father was deprived of the opportunity to play a role in his childhood and that he wants to have the chance to see his children grow up. According to ██████████ moving to Mexico with his wife would be an extreme hardship because his entire family lives in the United States. He states that they see each other constantly and all live in Medford, Oregon. In addition, he contends he has worked for the same company for six years and would be unable to support his family in Mexico where they would all struggle to survive. *Affidavit of ██████████* dated October 10, 2007.

A letter from Mr. ██████████ physician states that it is imperative for ██████████ that his wife remain in the United States. According to the physician, ██████████ medical needs have increased lately due to stress, causing health problems. The physician states he has seen ██████████ six times in the last five months, in addition to one visit to the emergency room. The physician states Mr. ██████████ has become clinically depressed and needs medication on an ongoing basis. In addition, the physician states that ██████████ and his wife have been through major hardships and losses together, and that it would be extremely detrimental for ██████████ mental health if the family cannot stay together. *Letter from ██████████*, dated June 3, 2009.

A psychological evaluation of ██████████ states that he lacked a male role model during his childhood because his father left Mexico to work in the United States. The counselor states that Mr. ██████████ began working at a very early age, rarely saw his father, turned to alcohol, and became an alcoholic in an attempt to cope with the loneliness and pressure of his responsibility as the only male in the household. The counselor states that he met his wife when he was seventeen years old and that she let him know that she would not tolerate his drinking, so he completely gave up alcohol. According to the counselor, ██████████ has a great fear of being separated from his family and is already suffering from mood swings, depression, frustration, anxiety, sleep and eating problems, and difficulty concentrating. The counselor diagnosed ██████████ with Generalized Anxiety Disorder and states that if he is separated from his family, he will re-experience Alcohol Dependence. The counselor contends that a separation from his wife would be catastrophic for ██████████, potentially spiraling

him back into a life with alcohol that he had previously left behind. *Psychological Evaluation*, dated May 2, 2009

A letter from [REDACTED] physician states that he is scheduled to have reconstructive surgery of both feet with a subtalar arthrodesis implant. According to the physician, it is imperative [REDACTED] follows up on this procedure and does not bear any weight for approximately four weeks after his operation. *Letter from [REDACTED]* dated June 3, 2009. Another letter from a different physician states that [REDACTED] has severe atopic dermatitis that frequently leads to skin infections. According to the physician, "requires daily care of his sores in a clean environment, and has to have medicine applied to affected areas." In addition, the physician states that the dermatitis is extensive on his hands, rendering him unable to do things and requiring his mother to help him with basic care. The physician also states that [REDACTED] rash gets worse in the sun and if exposed to allergens. *Letter from [REDACTED]* dated August 4, 2007. A copy of [REDACTED] IFSP in the record indicates that when he was two years old, he needed speech and language therapy four times a week. *Asante Child Development Services, Individualized Family Service Plan (IFSP)*, dated June 6, 2000.

Letters of support in the record indicate that [REDACTED] would suffer from depression if the applicant's waiver application were denied. *See, e.g., Affidavit of [REDACTED]* dated October 10, 2007; *Affidavit of [REDACTED]* dated October 10, 2007 (affidavit from [REDACTED] sister stating that he has not recovered from the loss of his child and that his wife's immigration situation adds to his stress); *Affidavit of [REDACTED]* dated October 12, 2007.

After a careful review of the entire record, the AAO finds that if [REDACTED] remained in the United States without his wife, he would suffer extreme hardship. The record shows that Mr. [REDACTED] started working at a very young age in Mexico, was separated from his father for long periods of time, and turned to alcohol to cope with his feelings of loneliness, frustration, and the pressure of being the only male in his household. The record shows that [REDACTED] was diagnosed with Generalized Anxiety Disorder and has a great fear of being separated from his wife and children. According to the psychological evaluation, it would be "catastrophic" for [REDACTED] to be separated from his wife and he would likely turn back to his reliance on alcohol, as he had done in the past. Moreover, a letter from his physician states that the stress of potentially being separated from his wife has caused [REDACTED] to become clinically depressed and have health problems to the extent that he has had medical visits six times in the past five months, as well as a visit to the emergency room. Furthermore, the record shows that the applicant and [REDACTED] lost a fetus in 2003 and letters from [REDACTED] wife and sister contend he has not fully recovered from that loss. In addition, the AAO recognizes that [REDACTED] and his wife have been together their entire adult lives. In addition, the applicant's departure would result in [REDACTED] becoming a single parent with a child who needs constant medical attention. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] had to move back to Mexico to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] has lived in the United States for

almost twenty years, his entire adult life. In addition, the record shows that the couple has two U.S. citizen children and that their son [REDACTED] had surgery on both feet in 2009 and has severe dermatitis to the extent that his physician contends he frequently gets skin infections, requires daily care of his sores, and because the dermatitis is extensive on his hands, he requires help with his basic care. [REDACTED] would need to readjust to a life in Mexico after having lived in the United States his entire adult life, a difficult situation made even more complicated given his history of alcohol use and the medical conditions of his son. It could also result in the loss of his permanent resident status. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, her subsequent entries into the United States without inspection and periods of unauthorized presence. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband and two children; the extreme hardship to the applicant's husband and children if she were refused admission; letters of support describing the applicant as a good mother and a good person who is always looking to help others, *Affidavit of [REDACTED]*, *supra*; *Affidavit of [REDACTED]*, dated October 15, 2007; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.