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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**



#5

Date: **SEP 12 2011**

Office: CHICAGO, IL 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, Chicago, Illinois, 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 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 presenting a lawful permanent resident card belonging to another individual to gain admission to the United States on January 12, 2000. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her family.

In a decision dated May 14, 2009, the Field Office 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 Decision of the Field Office Director* dated May 14, 2009.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserts that the applicant's qualifying relative will suffer emotional, psychological and financial hardships in the event he is separated from the applicant. Further, the applicant's attorney indicates that the qualifying spouse has close family ties in the United States, including his son whom he provides for emotionally and financially, and has lived in the United States his entire life. Further, the applicant's attorney contends that the qualifying spouse would suffer financially upon relocation to Mexico and would lose his career, his pension and his home.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief, birth certificates for the qualifying spouse's children, an affidavit from the qualifying relative, a psychological evaluation, an affidavit from the mother of the qualifying relative's first child, a birth certificate for the qualifying relative, a marriage license, identification documents for the qualifying spouse's family, financial documentation, the qualifying relative's general educational development diploma, educational documentation regarding two of the qualifying spouse's children, reference letters regarding the applicant, a letter from the applicant and qualifying spouse's pastor, documentation supporting the validity of the qualifying spouse and applicant's marriage, photographs, articles regarding marriage, country condition materials, doctor's notes regarding the oldest son of the qualifying spouse, medical records for the other children, Form I-130 and other documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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 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 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-Moralez*, 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 lawful permanent resident card, which was not issued to her, to gain admission into the United States on January 12, 2000. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for entering the United States through fraud or misrepresentation.

The applicant’s qualifying relative is her husband, 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 brief, birth certificates for the qualifying spouse’s children, an affidavit from the qualifying relative, a psychological evaluation, an affidavit from the mother of the qualifying relative’s first child, identification documents for the qualifying spouse’s family, financial documentation, articles regarding marriage, country condition materials and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant’s attorney asserts that the applicant’s qualifying relative will suffer emotional, psychological and financial hardships in the event he is separated from the applicant. Further, the applicant’s attorney indicates that the qualifying spouse has close family ties

in the United States, including his son whom he provides for emotionally and financially, and has lived in the United States his entire life. Further, the applicant's attorney contends that the qualifying spouse would suffer financially upon relocation to Mexico and would lose his career, his pension and his home.

The AAO finds that the applicant has established that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. With regard to the emotional and psychological hardships, the record contains a psychological evaluation regarding the qualifying spouse. The psychologist indicates that the applicant has a past history of abandonment issues and that, if the applicant returns to Mexico, he will suffer severely "with anxiety, preoccupation, low self-esteem, and overall deterioration in [his] psychological functioning." Further, in his affidavit, the qualifying spouse indicates that the applicant is his "best friend" and "confidant." He also states that he would be "devastated" if the applicant is "taken away from [him]" and that he "would suffer more than words could explain." The qualifying spouse also indicates that he has been married to the applicant for seven years (now ten) and that he depends on her support to care for the children so that he can financially provide for the family. He also states that he works additional jobs on the side to make extra money for his family, which he is able to do because the applicant watches the children, and that they plan for the applicant to be able to contribute financially by working at the children's school if her immigration problems are solved.

With regard to the qualifying spouse's financial hardships, the record contains documentation of the applicant's earnings, including tax returns, expenses and letters from the applicant's employer. These submitted documents demonstrate that the applicant provides financially for the qualifying spouse and that she does not currently work. The applicant's attorney contends that the qualifying spouse would have a very difficult time maintaining two households and financially providing for his eldest son without the applicant present to care for their children. The qualifying spouse indicates that he could not afford childcare for his two youngest children in the United States, so they would have to relocate to Mexico with the applicant. The record reflects that it would be very difficult for the qualifying spouse to keep up with his expenses, including the mortgage on his home, utilities, credit card bills and other expenses, and to also support his wife 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 her qualifying spouse would suffer extreme hardship in the event that he relocated to Mexico. The qualifying spouse was born in and has lived his entire life in the United States. His entire immediate family and extended family members live in and have status in the United States. Further, should the qualifying spouse relocate to Mexico, he may not have the option of bringing his oldest son with him, as his son's mother lives in the United States and indicates in an affidavit that she would not permit her son's relocation. The record also contains evidence of the qualifying spouse's immediate and extended family in the United States confirming their legal status in the United States. The applicant's attorney also claims that the qualifying spouse no longer has ties to Mexico and has not been there in over ten years. Furthermore, the applicant's attorney indicates that the qualifying spouse has established a career for himself in the United States,

working for the same company for over ten years. The applicant's attorney states that the qualifying spouse would lose his career, his pension and his home if he relocated to Mexico. The record contains letters from the qualifying spouse's employer, proof of ownership of his home and pension documents. The AAO concludes the qualifying spouse would experience extreme hardship if he relocated to Mexico to accompany the applicant because of his close family ties to and his length of residence in the United States and due to the potential financial hardships he 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 she 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 he accompanied the applicant or remained

in the United States, the applicant's support from the qualifying spouse and her apparent lack of a criminal record. The unfavorable factors in this matter are the misrepresentations made by the applicant in order to enter the United States.

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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.