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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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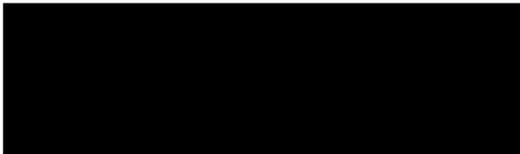
Date: APR 04 2012 Office: LAS VEGAS, NEVADA

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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Las Vegas, Nevada, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and is the father of four U.S. citizen children. He 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, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 23, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "did not place enough weight [on] the hardship the applicant's spouse will suffer if [the applicant] were to depart the United States." *Form I-290B*, filed October 23, 2009. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief and brief in support of the Form I-601, statements from the applicant and his wife, letters of support for the applicant and his wife, a photo of the applicant and his family, financial documents, household and utility bills, medical documentation for the applicant and his wife, and country-conditions documents for Mexico. 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.

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

- (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.

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 of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. *Supra* at 565. 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 indicates that on February 16, 1997, the applicant attempted to enter the United States by presenting a photo-altered I-551 Resident Alien Card in someone else's name. On February 18, 1997, the applicant was returned to Mexico. On February 20, 1997, the applicant entered the United States without inspection. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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).

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In his brief in support of the Form I-601 dated August 18, 2009, counsel states that the applicant's spouse would experience hardship if she relocates to Mexico because "the economic situation in Mexico is unstable," "the unemployment rate is high," "the living conditions...are not comparable to those of the United States," and "the poor conditions could be hazardous to the couple's health." In a statement dated October 23, 2009, the applicant's wife states the economy is worse in Mexico than in the United States. Counsel states the applicant's wife "is worried that if they live in Mexico, they will be unable to provide for each other and for their family." Additionally, in his appeal brief dated November 19, 2009, counsel states that most of the applicant's wife's family, including her parents and siblings, resides in the United States. The applicant's wife states she has only distant relatives with whom she has no contact in Mexico. The applicant's wife states living in Mexico "is very dangerous" as "there are murders, kidnappings, rape, and assault." The AAO notes that on February 8, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning states U.S. citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery." The warning also states that the rise in "kidnappings and disappearances throughout Mexico is of particular concern."

Counsel states the applicant suffers from diabetes, must take two insulin shots a day, and as a result, his pancreas has been severely damaged. In a statement dated August 18, 2009, the applicant states his pancreas no longer functions properly. Counsel states the applicant would not receive the same medical care in Mexico and it "would have devastating effects on his health." The applicant adds that the health insurance he receives from his employer covers his wife and children. Additionally, counsel states the applicant's wife suffers from anemia, takes medication three times a day, and goes to her doctor regularly for checkups. In two letters dated August 17, 2009, [REDACTED] states the applicant and his wife are under medical care and they need continued care.

The applicant's wife states her mother recently suffered a stroke that "affected her left arm, speech and the ability to move independently." She claims that she and the rest of her family take turns caring for her mother. Counsel claims that the applicant's mother-in-law may have to move in with their family so the applicant's wife can continue to care for her.

Based on her safety concerns in Mexico; her minimal ties to Mexico; her separation from her family in the United States, including her ill mother; her medical issues and possible disruption of her treatment; lack of health insurance in Mexico; and her employment issues; the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in Mexico.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, counsel states the applicant's wife "relies on [the applicant] for emotional support" and she has suffered "from anxiety" related to the possibility of their separation. Additionally, the record contains mortgage statements, utility and household bills, and medical bills. Counsel states the applicant is "their primary source of income" and his wife "would suffer tremendously trying to take care of everything herself as well as care for the children." Counsel's assertions that the applicant earns approximately \$800.00 a week, while his wife makes \$7.55 an hour working 30-25 hours a week are supported by the record, which contains paystubs and tax documents for the applicant and his wife. The applicant states his wife's income will not cover their monthly expenses and she will "suffer tremendously."

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically her financial and mental health issues, the record establishes that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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 adverse factors in the present case include the applicant's misrepresentation, his entry without inspection, and unlawful presence. The favorable and mitigating factors are the applicant's United States citizen wife; the extreme hardship to his wife and children if he were refused admission; the absence of a criminal record; his health condition; and his good moral character as described in several letters of support.

The AAO finds that, although the immigration violations committed by the applicant 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

We note that the director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, solely on the basis of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act and the director's denial of the Form I-601 waiver application. *Decision of the Director*, dated September 23, 2009. The director's denial of the Form I-485 was premature, as the applicant timely filed the instant appeal. Because the appeal will be sustained, there remains no basis in the present record for the denial of the adjustment application. Accordingly, the director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and issue a new decision.

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