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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

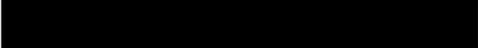


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DATE: APR 18 2012

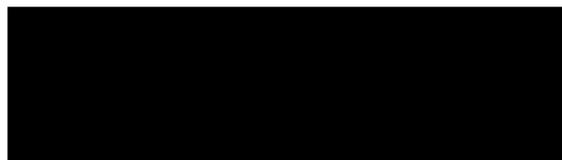
Office: HARLINGEN

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,

for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record establishes that the applicant is a native and citizen of Mexico who admitted under oath to having failed to disclose her 1997 marriage to her then lawful permanent resident when applying for a Border Crossing Card in 2001, and subsequently using said document to procure entry to the United States in 2002. *See Record of Sworn Statement*, dated August 12, 2009. The applicant was thus 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 having procured a nonimmigrant visa and subsequent entry to the United States by fraud or willful misrepresentation. 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 her now U.S. citizen spouse and children, born in 1998 and 2005.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 9, 2009.

In support of the appeal, counsel for the applicant submits a brief, dated December 9, 2009 and copies of previously submitted documents in support of extreme hardship. The entire record was reviewed and considered in rendering this decision.

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

- (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.

....

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

Section 212(i) of the Act provides:

- (1) 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.

Regarding the field office director's finding that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, counsel contends that the applicant does not recall if she was questioned at the nonimmigrant visa interview regarding her marital state or whether this question was left blank on her application. Since the USCIS has not provided a copy of her sworn statement in which they claim she failed to disclose her marital state, counsel asserts that the field office director erred in concluding that the applicant's failure to disclose her marriage to a lawful permanent resident was a material misrepresentation. *Brief in Support of Appeal*, dated December 9, 2009.

The AAO notes that in order to obtain a Border Crossing Card and procure entry to the United States with said documentation, an individual must demonstrate ties to Mexico that would compel him or her to return to Mexico after a temporary stay in the United States. *Border Crossing Card-U.S. Department of State, travel.state.gov*. The record indicates that prior to obtaining the Border Crossing Card in 2002, the applicant had married a lawful permanent resident in 1997 and had a U.S. citizen child in 1998.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The record establishes that the applicant provided a sworn statement in August 2009, under penalty of perjury, and signed said statement in front of a

witness, confirming that she did not disclose her marriage when applying for the Border Crossing Card because she thought that she was going to be denied a visa and moreover, admitting that she failed to say that she was married and not single. *See Record of Sworn Statement on Affidavit Form*, dated August 12, 2009. Had the applicant disclosed her marriage to a lawful permanent resident in 1997, and the existence of a U.S. citizen child, born in 1998, she would not have been granted the Border Crossing Card and entry to the United States in 2002. As such, it has not been established that the applicant did not obtain a nonimmigrant visa and subsequent entry to the United States by fraud or willful misrepresentation. The AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 U.S. citizen spouse is the only qualifying relatives in this case. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. 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.

The applicant’s U.S. citizen spouse asserts that he will suffer extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he contends that he and his wife are very united and have not been separated from each other except when he has to travel for work, and long-term separation from her would cause him hardship. In addition, the applicant’s spouse explains that his wife plays an integral role in his children’s daily care and were she to relocate abroad, his children would suffer hardship due to long-term separation from their mother. Moreover, the applicant’s spouse details that he is a mechanic for [REDACTED] and has to travel all over the United States for long periods of time. He states that were his wife to relocate abroad, he would not be able to continue his gainful employment as he would have to take care of his children, and such a predicament would cause him financial and professional hardship. Finally, the applicant’s spouse references the problematic country conditions in Mexico, specifically the high rate of violence, and expresses fear regarding his wife’s well-being were she to relocate to Mexico due to her inadmissibility. *Affidavit of* [REDACTED] dated September 8, 2009.

In support, a mental health evaluation has been provided, noting that the applicant’s spouse is suffering from stress and anxiety at the prospect of his wife relocating abroad due to her inadmissibility and has been referred for a medical evaluation for headaches and anxiety and possible medication. *Mental Health Evaluation from* [REDACTED] *Modern View Clinical*

*Services.* Evidence of the applicant's spouse's long-term gainful employment, earning over \$50,000 in 2008, has also been submitted. Said documentation further establishes that the applicant's spouse is the sole financial provider for the family while the applicant cares for the children. Moreover, documentation establishing the applicant's extensive role in her children's daily lives, including extensive volunteer work with her children's schools, has been provided. Further, letters from friends and family establishing the hardships the applicant's spouse and children would experience were the applicant to relocate abroad have been submitted by counsel. Finally, the U.S. Department of State corroborates the applicant's spouse's concerns regarding travel to Mexico. As noted by the U.S. Department of State, U.S. citizens should defer all non-essential travel to Tamaulipas, the applicant's home state, due the high rates of crime and violence. *Travel Warning-Mexico, U.S. Department of State*, dated February 8, 2012.

The record reflects that the cumulative effect of the emotional, professional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibly rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

With respect to relocating abroad, counsel contends that the applicant's spouse would experience hardship due to the lack of employment ties to Mexico. *Supra* at 6. In addition, the applicant's spouse references the high rates of crime and violence in Mexico. *Supra* at 2. The record establishes that the applicant's U.S. citizen spouse because a permanent resident in 1988, when he was a child. He has been residing in the United States for over twenty years. He no longer has significant ties to Mexico. Were he to relocate abroad, he would have to leave his home, his community and his long-term gainful employment. Finally, as referenced above, the U.S. Department of State has issued a travel warning for Mexico specifically referencing Tamaulipas, the applicant's birthplace. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. 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 Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or stayed in the United States; home ownership; the applicant's apparent lack of a criminal record; support letters from friend and family; the payment of taxes; extensive volunteer work; and community ties. The unfavorable factors in this matter are the applicant's misrepresentation when procuring a visa and subsequent entry to the United States and periods of unlawful presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application 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, 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 sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

**ORDER:** The appeal is sustained. The waiver application is approved. The field office director shall continue processing the Form I-485 application accordingly.