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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H5

DATE: AUG 06 2012

Office: MONTERREY, MEXICO



IN RE:



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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Monterrey, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 seeking to procure admission into the country through misrepresentation of a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may live in the United States with his spouse and family.

In a decision dated August 30, 2010, the director concluded the applicant had failed to establish his wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through an accredited representative, the applicant asserts on appeal that the applicant merits a favorable exercise of discretion, and that evidence establishes his wife will experience extreme emotional, physical and financial hardship if the applicant is denied admission into the United States. The accredited representative submits new evidence of hardship to support these assertions.

The record includes affidavits and letters from the applicant's wife, a psychological assessment, documents relating to their child, and letters from the applicant's sister-in-law attesting to the applicant's good character and his wife's hardship. The record also includes, photographs, country conditions evidence, a copy of the applicant's mother-in-law's death certificate, and untranslated Spanish-language documents.

8 C.F.R. § 103.2(b)(3) provides that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the Spanish-language documents are not accompanied by certified English translations, they cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal

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.

The record reflects that on July 17, 2000, the applicant attempted to enter the United States by presenting a border crossing card and false pay records to establish his financial solvency. The border crossing card was subsequently canceled, the applicant withdrew his application for admission into the United States, and the applicant returned to Mexico.¹ The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure admission into the United States through misrepresentation of a material fact. The applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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,

¹ The record reflects the applicant also attempted to enter the United States without admission on May 15, 2002.

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).

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 is his qualifying relative under section 212(i) of the Act. The record contains references to hardship the applicant's child would experience if the waiver application is denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Accordingly, hardship to the child will be considered only to the extent that it causes the applicant's spouse to experience hardship.

The applicant's wife states in letters and affidavits that she and their daughter live in Texas with her twin sister's family, she works in Texas, and their daughter attends school in Texas. She

wakes up early and travels regularly between Texas and Matamoros, Mexico, where the applicant lives, so that their family can spend time together. The applicant lives at an uncle's house that is in disrepair and dangerous. His wife has witnessed violence between the military and presumed delinquents in front of the applicant's home and they hear gunfire every night when they are in Matamoros. She worries about their family's safety due to the early hours she travels and the violence in and around Matamoros. She states she needs the applicant's help to support and raise their daughter, and she must rely on her sister for childcare assistance when she works and when she visits the applicant. Her mother died in 2007, and her twin sister is her only remaining family member. Her sister will not travel to Mexico due to safety concerns, and the applicant's wife misses spending time with her. The applicant's wife indicates that the applicant had to resign from his last job in order to attend his immigrant-visa interview that occurred during work hours, and that she is the sole provider for their family. Their daughter cries at night when she is separated from the applicant. Their daughter's sadness makes the applicant's spouse tearful; the situation makes her feel sad, hopeless and uncertain. She is unable to obtain psychotherapy because she has no health insurance and no money to pay for sessions.

A mental-health professional diagnoses the applicant's wife with adjustment disorder with anxiety, and states that she has mild anxiety attacks, severe social impairment, and is emotionally and physically exhausted due to stress and fears related to the applicant's immigration situation. The evaluation indicates that the applicant's wife spends several days a month with her sister in Texas but lives primarily with the applicant and their daughter in Mexico. She regularly wakes up early to travel to Texas to work as a maid in a hotel, bring their daughter to her sister's house or school in Texas, and return to Mexico in the evening. The applicant's wife feels stress and fear for their family's safety when they are in Mexico, and for the applicant's safety when she and their daughter are in the United States. The evaluation also indicates the applicant's wife has suffered stress-related medical problems leading to migraines, ovulation problems, and a miscarriage; their daughter experiences upper respiratory problems due to the dampness of their home in Mexico; and the applicant's wife is financially stressed, having borrowed money to pay for costs related to the applicant's immigration applications.

The record contains an affidavit signed by the applicant's wife stating that she has been employed full-time at a hotel since March 2009, and that she was unemployed for three years. The record also contains a letter from the applicant's sister-in-law attesting to the applicant's wife's emotional hardship and expressing concern about the family's safety in Mexico. Country-conditions information reflects ongoing crime and violence in Matamoros, Tamaulipas, Mexico, and increased hijackings, sometimes leading to deaths, on the highways in Tamaulipas, Mexico.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes that the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the United States, and she resides in the United States. The applicant's wife suffers from several psychological disorders and emotional and physical exhaustion due to stress and fears related to her travel between Texas and Matamoros, and safety concerns for the applicant, herself and their daughter when they are with the applicant in Mexico. The combined factors establish that the hardship the

applicant's wife would suffer if she remains in the United States go beyond the common results of inadmissibility, and rise to the level of extreme hardship.

The cumulative evidence also establishes the applicant's wife would experience hardship beyond that normally experienced upon removal or inadmissibility if she resides with the applicant in Mexico. The applicant's wife was born in the United States and has no ties to Mexico. By relocating she would leave her only family member, her twin sister, who has provided her with emotional and other types of support. Furthermore, country-conditions reports confirm the applicant's wife's safety concerns for the applicant, herself and their daughter in Matamoros, Mexico. Reports reflect that the situation is dangerous throughout the state of Tamaulipas due to transnational criminal organization violence and crime, that extreme caution should be exercised when traveling in Tamaulipas, and that non-essential travel to the state should be deferred. See http://travel.state.gov/travel/cis_pa_tw/tw/tw_5665.html. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to her inadmissibility.

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(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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:

[B]alance 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 unfavorable factors in this matter are the applicant's attempt to procure admission into the United States through misrepresentation of a material fact on July 17, 2000, and a subsequent attempt to enter the United States without admission on May 15, 2002. The favorable factors are the hardship the applicant's wife and family would face if the applicant is denied admission into

the United States. Favorable factors additionally include submitted affidavits from family members attesting to the applicant's good moral character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are very serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act. Accordingly, the Form I-601 appeal will be sustained.

ORDER: The appeal is sustained.