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



H5

DATE: AUG 14 2012

OFFICE: SAN JOSE, CALIFORNIA

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

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 black ink, appearing to read "Perry Rhew", with a long horizontal flourish extending to the right.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act 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 remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated June 8, 2010.

On appeal counsel asserts that if a waiver is not granted, the applicant's U.S. citizen spouse will suffer extreme hardship of an emotional, economic, and familial nature. *See Form I-290B, Notice of Appeal or Motion*, received June 29, 2010.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; a hardship affidavit; supporting letters; documents related to the applicant's children; marriage and birth certificates and family photos; and employment, tax and financial records. The entire record was reviewed and considered in rendering this 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 the applicant first entered the United States without inspection on or about January 19, 1986. According to the applicant's spouse, she returned to Mexico in 1987 to care for her mother who was seriously ill at the time. The applicant entered the United States without inspection a second time in or about November 1990 and has remained ever since. On the applicant's Form I-817, Application for Family Unity Benefits, filed December 3, 2003, she falsely asserted that the date of her "last" United States arrival was on January 19, 1986 and she is eligible for adjustment under the LIFE Act because she entered the United States before December 1, 1988 and "was in the United States on that date." In addition to the applicant's false assertions, a number of supporting letters were submitted on her behalf in which friends and family members, including the applicant's spouse, falsely asserted that the applicant resided continuously in the United States since 1986. On a second Form I-817, filed on January 25, 2007, the applicant again falsely claimed LIFE Act eligibility on the basis that she entered the United States before December 1, 1988 and "was in the United States on that date." On her 2007 Form I-817 the

applicant also falsely claimed that her last United States arrival was on May 28, 1988 and her "continuous U.S. residence began" on January 19, 1986. Based on the foregoing, the Field Office Director found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (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.

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 and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-Morales*, 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 spouse is a 53-year-old native of Mexico and citizen of the United States who has been married to the applicant for 27 years. He has resided in the United States since 1980 and explains that he proposed to the applicant after knowing her for only two weeks, married her in April 1985, and they have never been apart since November 1990. The applicant and her spouse have three children together, two young adults and ██████████ an 11-year-old minor. Documentary evidence in the record shows that Jackie is a “special needs” child who attends reading intervention class for 45 minutes per day and speech therapy sessions twice a week with her school’s speech specialist. The applicant’s spouse states that in 2000, through much hard work over many years they were able to purchase their first family home, and in 2004 they purchased their second home and he became a U.S. lawful permanent resident. He writes that he has been with the same employer for twelve years now, having begun with U.S. Technical Ceramics, Inc. in

2000. Supporting evidence has been submitted for the record. The applicant's spouse maintains that he and the applicant have been living in the United States for decades, have always paid their taxes, and he is the man he is today only because he has had her by his side. He pleads for the sake of his sanity and well-being that the applicant's immigration violations are forgiven and she is permitted to remain in the United States with him and their children. The applicant's spouse states that his life would be a disaster without the applicant, his family would disintegrate, they would lose both their homes and their children's futures would be gravely affected. He contends that he would be unable to afford both mortgages without the applicant's income contribution on which they rely. The applicant's spouse indicates that as he is now well into his 50s, he would be unable to secure and work a second job to cover the family's expenses and he is far too advanced in age to survive separation from his spouse of nearly 30 years.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including his 27-year marriage to the applicant and the fact they have not lived apart since November 1990; the emotional/psychological/familial impact of separation from his lifelong partner; the physical impact of separation at his advanced age; and the significant economic difficulties including the loss of the applicant's income contribution; seeking, securing and maintaining additional employment at 53-years of age; and paying the family's existing financial obligations, supporting their college-age children, and supporting the applicant in Mexico. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to permanent separation from the applicant.

Addressing relocation, the applicant's spouse states that this is not an option for his family. He writes that his three children are well-established in the United States and it would be very difficult for them to adjust to life in Mexico. He asserts particular concern for Jackie whose speech and language has progressed so much due to constant academic assistance in the United States, assistance he contends will not be available to her in Mexico. The applicant's spouse maintains that at 53-years-old, he would be unable to secure employment in Mexico and would thus be unable to provide for his family. He states that even if they were able to sell their homes, the mortgages are so significant that there would be nothing left over with which to support themselves in Mexico. The applicant's spouse writes that he came to the United States in 1980 and has lived here ever since, becoming first a lawful permanent resident and then a U.S. citizen. He explains that he has worked for the same employer for 12 years, has purchased two homes, always paid his taxes, and contributed to the community. The applicant's spouse states that in Mexico, he could never offer his family the standard of living, health, education, and opportunities that they have enjoyed in the United States.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his advanced age; continual residence of more than 30 years in the United States; adjustment at 53-years-old to a country in which he has not resided for decades; employment, economic, health-related, and quality of life concerns about Mexico; the applicant's ownership of two homes in the United States and lengthy U.S. employment; and concerns for the education and special needs of the applicant's minor daughter. Considered in the aggregate, the

AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 states 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(h)(1)(B) relief must bring forward to establish that he 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 the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family and community ties to the United States; attestations by others to her good moral character; her payment of taxes and apparent lack of a criminal record. The unfavorable factors include the applicant's immigration violations - having entered the United States without inspection on two occasions, working without authorization, and misrepresenting the dates on which she entered the United States in order to qualify for immigration benefits for which she was not lawfully eligible.

Although the applicant's violation of immigration law is significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

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. The application is approved.