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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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**U.S. Citizenship
and Immigration
Services**

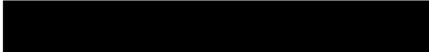


H5

DATE: FEB 06 2012 OFFICE: LOS ANGELES, CA

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 black ink that reads "Perry Rhew".

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, 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 has resided in the United States since 1997, when she used a lawful permanent resident card which did not belong to her to procure admission into the United States. She 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. 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 there was insufficient evidence of extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 8, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal. Therein, counsel explains the applicant's immigration history, as well as the hardship given separation from the applicant, who would have to relocate to Jalisco, Mexico. *Brief in support of appeal*, July 6, 2009. Counsel further explains the impact separation would have on the four children, emphasizing that the youngest child, [REDACTED] would have to go with the applicant to Mexico and face inadequate educational opportunities there. *Id.* Counsel further explains the applicant's spouse would be unable to return to Mexico with the applicant, given his lack of contacts, the economy, and the violence directed at U.S. Citizens. *Id.* Additionally, counsel indicates the applicant's spouse would be unable to fill the familial role the applicant has in the family, would suffer financially without her contributions, and would lose his source of psychological and emotional support. *Id.* Counsel lastly asserts the Field Office Director erred in applying a higher standard than required for the waiver, and that all relevant factors were not considered. *Id.*

The record includes, but is not limited to, counsel's brief, declarations from the applicant's spouse, statements from friends and family, educational documents, evidence of country conditions, evidence of birth, marriage, and citizenship, other applications and petitions filed on behalf of the applicant, evidence of exclusion proceedings, U.S. Federal Income Tax returns, paystubs, evidence related to a mortgage and home ownership, and a 2002 psychological evaluation. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Section 212(i) of the Act provides:

- (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.

In the present case, the record reflects that on or about January 6, 1997 the applicant used a U.S. lawful permanent resident card not belonging to her in the name of [REDACTED]" to procure admission into the United States. *Form I-213, Record of Deportable Alien*, January 7, 1997. The applicant was placed in exclusion proceedings, and was ordered excluded and deported *in absentia* from the United States on April 21, 1997. *Form EOIR 36, Order of the Immigration Judge*, April 21, 1997. The Board of Immigration Appeals (BIA) dismissed a subsequent appeal. *Order of the BIA*, March 25, 1998. The applicant has remained in the United States since her 1997 entry. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen spouse.

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*, 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 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.

The applicant's spouse explains that if he were separated from the applicant, he would experience financial difficulties without her income, the elder three children would have to remain in the

United States given the cultural differences and the stigma against Americanized Mexicans, and their youngest child, [REDACTED] would suffer given there is no educational system which would meet her needs as an English speaker. *Declaration of applicant's spouse*, May 6, 2009. The applicant's spouse further states that he could not imagine [REDACTED] growing up in the poverty he experienced, in addition to her not having any English language instruction until the 5th or 6th grade. *Id.* A letter from the municipal president of [REDACTED] Mexico confirms the area lacks employment opportunities. *Letter from [REDACTED]* April 23, 2009. Another letter from a school official in [REDACTED] corroborates that the local school does not offer bilingual classes, and only offers basic English classes in the 5th and 6th grade. *Letter from [REDACTED]* April 23, 2009. Another letter confirms the same educational opportunities exist in Santa Cruz de la Soledad. *Letter from [REDACTED]* April 23, 2009. A letter from a retired educator attests to the applicant's integral role in her children's education and upbringing, concluding her departure would be harmful to the children. *Letter from [REDACTED]*

The applicant's spouse contends he could not return to Mexico because he has no family, contacts, and no property there. *Declaration of applicant's spouse*, May 6, 2009. The applicant's spouse expresses concern over whether he would be able to make enough money in Jalisco, given the severe economic downturn, to meet his financial obligations and send his children to college. *Id.* Furthermore, the applicant's spouse expresses fear over the applicant's and [REDACTED] safety, given the documented violence in Jalisco. *Id.* The applicant's spouse then discusses the applicant's integral role in the family, as well as his inability to function without the applicant as his psychological and emotional support. *Id.* Letters from the children corroborate the applicant's spouse's assertions on the applicant's role in raising the children and keeping the family intact. *See letters from [REDACTED]* School records are submitted to show attendance and grades for all four children. *See report cards.*

The AAO acknowledges the applicant's spouse may suffer some financial difficulties if the applicant relocates to Mexico. However, despite submission of evidence income and mortgage statements, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. Without details of the family's expenses, including evidence on educational expenses for the children and monthly bills, the AAO is unable to assess the extent of financial hardship the applicant's spouse will face if the applicant returns to Mexico without him.

Published reports support the spouse's fear that the applicant and the youngest child [REDACTED] will be in significant danger in Jalisco, Mexico. The current U.S. Department of State travel warning on Mexico indicates:

[REDACTED] Official U.S. government employees are prohibited from traveling to Colotlan, Jalisco, and Yahualica, Jalisco, both near the Zacatecas border, because of an increasingly volatile security situation. Concerns include roadblocks placed by individuals posing as police or military personnel and recent

gun battles between rival TCOs involving automatic weapons. You should defer non-essential travel to these cities. In addition, the border areas between Jalisco state and the states of Zacatecas and Michoacán, as well as in or near the cities of Tepic and Xalisco, Nayarit have been sites of violence and crime involving TCOs. You should exercise extreme caution when traveling in these areas.

U.S. Department of State Travel Warning: Mexico, April 22, 2011. Moreover, the spouse's psychological difficulties caused by concern over [REDACTED] living in Jalisco is also supported by articles of record on poverty in that area, as well as the U.S. Department of State, which indicates in its Human Rights report that the daily minimum wage in Jalisco is the equivalent of 4.52 U.S. dollars, an amount that is insufficient to provide for the basic needs of the employee and his family. See *U.S. Department of State Human Rights Report, Mexico*, April 8, 2011. This is also confirmed by a letter from a local official. *Letter from [REDACTED]* April 23, 2009. Additionally, the spouse's concern over educational opportunities in Mexico is supported by the record. *Letter from [REDACTED]* April 23, 2009, *Letter from [REDACTED]* April 23, 2009. The applicant's spouse contends he needs the applicant for emotional and psychological support. The normal psychological effects of separation from a spouse are exacerbated in this case by the spouse's objective fear for the applicant's and [REDACTED] safety as well as the lack of opportunities for [REDACTED]. When viewed in conjunction with financial difficulties upon losing the applicant's income, the AAO finds there is sufficient evidence to show the qualifying relative would experience extreme hardship given separation from the applicant.

The applicant has also provided sufficient evidence of extreme hardship to her spouse upon relocation to Mexico. As discussed supra, the financial conditions in Jalisco, especially in Chalapa, given the articles on record, are not good, especially when taken in light of the insufficient minimum wage in that area. *U.S. Department of State Human Rights Report, Mexico*, April 8, 2011, *Jalisco's Revolution: An Alternative Development Model to Keep People Home*, [REDACTED] May 5, 2008. It is evident that the minimum wage would be insufficient to pay for the qualifying relative's current mortgage, much less basic necessities. These financial difficulties are exacerbated by the security concerns in that area, as explained supra. It is acknowledged that the applicant's spouse is a native of Mexico, and is fluent in Spanish. However, in that the record provides sufficient evidence to establish the financial, emotional and other impacts of relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and he relocates to Mexico with the applicant.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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 unfavorable factors include the applicant's misrepresentation, periods of unauthorized presence, and her failure to appear at removal proceedings. The favorable factors include the extreme hardship to the applicant's spouse, her lack of a criminal record, good moral character as shown in letters from family and friends, and evidence of family and property ties in the United States.

Although the applicant's violations of immigration law 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.