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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

[Redacted]

DATE: FEB 07 2012 Office: PORTLAND, OR FILE: [Redacted]

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i).

ON BEHALF OF APPLICANT:
[Redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,
Michael Shumway
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the District Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who resided in the United States during the following time periods: January 1992 to November 1994; September 1995 to November 1999; and April 3, 2000 to the present. The applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(B)(i)(II), for having been unlawfully present in the U.S. for more than one year and seeking readmission within 10 years of his departure from the U.S. The applicant was additionally 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 procuring a visa and admission into the United States by fraud or willfully misrepresenting 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§1182(a)(9)(B)(v) and 1182(i), in order to live in the U.S. with his spouse and family.

In a decision dated May 28, 2009, the director concluded the applicant had failed to establish that his wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence demonstrates the applicant's wife will experience extreme hardship if she moves with the applicant to Mexico, or if she remains in the U.S. separated from the applicant. To support these assertions counsel submits affidavits written by the applicant, his wife and family members. Counsel also submits psychological evaluation evidence for the applicant's wife, as well as medical records for his children and in-laws, academic evidence for his children, and evidence that one of his sons receives speech articulation assistance at school. In addition, counsel submits financial and country conditions evidence and letters from friends and family attesting to the applicant's good character. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides in pertinent part:

(i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in

the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Counsel does not contest that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for which a waiver is provided under 212(a)(9)(B)(v). More importantly, the applicant is permanently inadmissible under section 212(a)(6)(C) of the Act.

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.

Counsel does not contest that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and the record supports a finding of inadmissibility under this provision.

The record reflects that the applicant was admitted into the United States on April 3, 2000 with a B2 visitor visa obtained in Mexico City on March 6, 2000. The B2 visa contains an annotation that the applicant is traveling with his mother to visit friends in Portland, Oregon. The applicant remained in the U.S. and subsequently filed for adjustment of his status to that of a lawful permanent resident. The record reflects that at his Form I-485 adjustment of status interview the applicant admitted to immigration officers that he failed to disclose his marriage to a lawful permanent resident who lived in the U.S. when he applied for his B2 visitor visa. The applicant also admitted to failing to disclose a January 1992 arrest in the U.S. for theft (dismissed on June 25, 1992.)

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998). The Board of Immigration Appeals (BIA) has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 proper determination that he be excluded.

See Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The AAO finds the applicant's failure to disclose his theft arrest was not material, in that the charges were dismissed in June 1992 and would most probably not have led to exclusion of the applicant. The applicant's failure to disclose his marriage to a lawful permanent resident who

lived in the U.S., however, was material in that it shut off a line of inquiry that was relevant to the basis of the applicant's eligibility for a visitor visa. The AAO finds that such further inquiry might well have resulted in the denial of the applicant's B2 visitor visa and a determination that he be excluded. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa and admission into the United States through material misrepresentation.

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.

The applicant is married to a U.S. citizen. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

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 under either section 212(a)(9)(B)(v) or section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 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.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide 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. *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 BIA 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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.

Counsel asserts on appeal that the applicant's wife will experience extreme emotional, physical and financial hardship if the applicant is denied admission into the U.S. Counsel asserts the applicant is the sole provider for his family and that his wife would be unable to work and support their family if the applicant were denied admission into the U.S. Counsel indicates that the applicant's wife is suffering from depression due to the stress of her husband's immigration situation. Counsel asserts further that the applicant's wife would experience emotional hardship if

she moved to Mexico with her husband and gave up her home, proximity to her family, and her children's opportunities for education and special services in the U.S. Counsel indicates the applicant's wife would also suffer financial hardship if she moved to Mexico, and that she and her family would face physical dangers due to drug-related crime in the state of Michoacan, where counsel claims the applicant and her husband are from.

In support of these claims the record contains affidavits from the applicant and his wife indicating the applicant's wife is originally from Mexico, but has been lawfully in the U.S. since 1995. The applicant's wife's parents and siblings live in the U.S., and she and the applicant have four U.S. citizen children, ages 13, 7, 6, and 11 months. The affidavits state the applicant supports the family financially and that the applicant's wife cares for their children and takes care of the home. The applicant's wife indicates she speaks little English and has a 3rd grade education, and that she would be unable to find work to support her family and pay the family's bills in the U.S. The affidavits state further that the children are used to life in the U.S., and to being cared for by their mother. They also state their 6-year-old son receives special oral communication assistance at his school. The affidavits indicate they have few family ties in Michoacan, Mexico, that their children would have inferior educational and life opportunities there, and they express fear that the applicant and his family would live in danger in Michoacan due to drug cartel violence.

The record contains a psychological evaluation for the applicant's wife, conducted on June 19, 2007. Two follow-up evaluations conducted June 17, 2009 and May 10, 2011 are also contained in the record. The entire family was present and interviewed for each evaluation. Based on observations and information provided during the interviews, the evaluator states in her 2007 evaluation that the applicant's wife shows symptoms of depression which are likely to worsen if her husband leaves the United States. Psychotherapy sessions are recommended to help the applicant's wife if her symptoms worsen. The June 2009 follow-up evaluation diagnoses the applicant's wife with Major Depressive Disorder, and a medical evaluation and individual therapy are recommended for the applicant's wife. The May 2011 follow-up evaluation re-diagnoses the applicant's wife with Major Depressive Disorder and states that her symptoms have worsened and that the applicant's wife now also describes stress-related physical symptoms due to concerns about her husband moving to Mexico. The evaluations indicate the children's development and emotional well-being would also be at risk if they were separated from their father.

The record contains information reflecting that the applicant's kindergarten-aged son was placed into an Individual Education Program at his school to correct his difficulties producing various target speech sounds. Under the program he receives 30 minutes of speech articulation assistance once a week. The program information reflects he has no other impairments and does not require special technical services or devices. His speech sound ability has improved, and he is otherwise doing well in school. The record contains evidence of medical treatment the applicant's mother and father-in-law receive, as well as financial information reflecting the applicant's earnings, and reflecting the family's property taxes, utility bills and home mortgage payments. The record also contains letters from friends and family stating opinions that the applicant's family will experience hardship if the applicant moves back to Mexico, and attesting to the applicant's good character. Country conditions articles and reports contained in the record discuss general poverty and health

care access problems in Mexico. Department of State Travel Alerts reflect further that the State of Michoacan is home to one of the country's most dangerous and violent drug trafficking related transnational criminal organizations (TCO), and that due to ongoing violence and persistent security concerns non-essential travel to Michoacan should be deferred.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes that the applicant's wife would experience emotional and financial hardship that rises beyond the common results of removal or inadmissibility if she remained in the U.S. without the applicant.

The AAO finds, however that, the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocates to Mexico with the applicant.

Counsel indicates on appeal that the applicant's wife's fear for their family's safety in Michoacan, Mexico would cause her extreme emotional hardship. However, no evidence was submitted to corroborate claims that the applicant is from the state of Michoacan, or that the applicant and his family would move there upon relocation. The applicant's passport reflects he was born in the state of Queretaro. A review of the record reflects further that the applicant has consistently stated in immigration documentation that he was born, and lived in, the state of Queretaro prior to living in the United States. Although country conditions evidence contained in the record reflects that there is drug-related violence in the state of Michoacan, the evidence does not indicate that there is similar violence in the state of Queretaro. The evidence thus fails to establish that the applicant's wife and family would face the risk of drug-related crime and violence if they relocated to Mexico. Furthermore, although psychological evaluation evidence reflects the applicant's wife suffers from Major Depressive Disorder due to anxiety and stress related to the applicant's immigration situation, it is noted that the stress and anxiety discussed in the evaluation pertains largely to the prospect of living in the U.S. without the emotional and financial support of the applicant. The evaluation in and of itself fails to demonstrate that the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she and her children relocated to Mexico with the applicant.

The evidence also fails to demonstrate that the applicant's son's speech articulation condition is serious, or that he requires special services or devices unavailable in Mexico. The record does not reflect that the applicant's wife or children suffer from medical or other conditions that could not be treated in Mexico, and the record fails to establish that the applicant's wife's parents are dependent upon her for care, or that separation from her parents and family in the U.S. would cause the applicant's wife to experience hardship beyond that normally experienced upon removal or inadmissibility. In addition, the generalized evidence on poverty in Mexico fails to establish that the applicant's children would receive an inadequate education in Mexico, or that the applicant would be unable to find work in Mexico. It is also noted that the applicant's children understand Spanish, and that his wife is originally from Mexico and is thus familiar with the language and culture of the country.

As the applicant has not established extreme hardship to a qualifying family member, both in the U.S. and upon relocation, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.