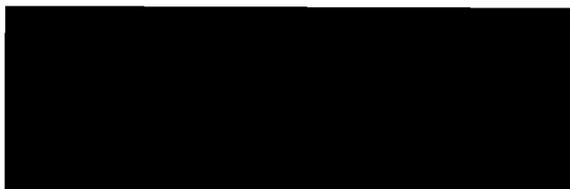


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



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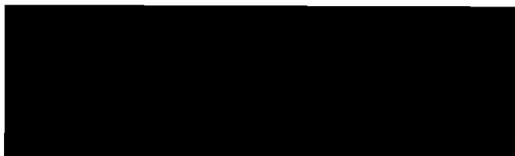
DATE: **FEB 10 2012** OFFICE: LOS ANGELES, CALIFORNIA

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver request, 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 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 seeking to procure admission into the United States through fraud or misrepresentation. The applicant is the derivative spouse of a Lawful Permanent Resident. The applicant does not contest this finding of inadmissibility. Rather, he 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 his Lawful Permanent Resident spouse and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of Field Office Director, Los Angeles, California*, amended date June 23, 2009. The AAO notes that the applicant through previous counsel also filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) on October 19, 2007, which remains pending.

On appeal, counsel contends that the documentary evidence demonstrates that the applicant's spouse will suffer extreme emotional and physical hardship because of the applicant's inadmissibility, and thereby, the applicant merits a favorable exercise of discretion in the consideration of his waiver request. *See Form I-290B, Notice of Appeal or Motion*, dated July 14, 2009; *see also I-290B Brief in Support of Appeal*, dated October 13, 2009.

The record includes, but is not limited to: a brief from counsel; letters of support; identity documents; medical documents; financial documents and bills; employment documents; school records; and photographs.¹ The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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

¹ The AAO notes that the record includes documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

Translations. 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.

The AAO also notes that these documents do not contain a certified translation to the English language. Accordingly, the AAO will not consider the documents.

(i) In general.-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).

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a photo-altered Mexican passport containing several altered nonimmigrant U.S. visas when seeking admission to the United States on October 2, 1995. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant through counsel has not disputed his inadmissibility on appeal. The AAO finds 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 Secretary of Homeland Security (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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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 daughter would experience if the waiver application were 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. 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 child will not be separately considered, except as it may affect the applicant's spouse.

Counsel contends that the applicant's spouse would suffer extreme emotional and physical hardship upon separation from the applicant because she and the applicant have been together for over 21 years, and she depends completely on the applicant for emotional support and medical coverage due to her mental health-related diagnoses and medical conditions. *See I-290B Brief in Support of Appeal, supra*. Counsel submitted a statement from the spouse in which she discusses her relationship with the applicant; how the applicant emotionally supports her with her mental health concerns; how the applicant's employment-based insurance supports her medical conditions; the circumstances of her miscarriage and treatments for infertility; and how the applicant is a loving husband and wonderful father. *See Letter of Support from [REDACTED]*, dated October 8, 2009. The spouse further discusses how she would suffer extreme financial hardship upon separation from the applicant because she is unemployed, and he is the main breadwinner for the family. *Id.* Counsel also submitted a statement from the applicant in which he discusses his immigration matters; family and social ties to the United States; employment history; the importance of his employment-based medical insurance; concerns for his spouse's mental health and how he supports her emotionally; and the relationships with his daughter and in-laws. *See Letter of Support from [REDACTED]*, dated October 8, 2009.

Additionally, counsel submitted evidence of the spouse's mental and physical health as well as current treatments. *See Progress Notes*, dated July 14 and 31, August 17, September 10 and 16, 2009; *see also Gynecology Profile*, dated March 31, 2009; *medical and herbal prescriptions; health insurance card*. And, counsel submitted evidence of the applicant's salary, the spouse's previous earnings, and household expenditures including the mortgage and utilities. *See U.S. Individual Income Tax Returns (Form 1040) and Wage and Tax Statements (Form W-2); see also employment letter; earnings statements; billing statements*.

The AAO finds that the record is sufficient to establish that the applicant's spouse would endure emotional and medical hardship upon separation from the applicant due to the applicant's inadmissibility. Medical documentation has been provided that the applicant's spouse has suffered from and has been treated for mental and physical health-related concerns: depression, thoughts of suicide and homicide ideation, anxiety, paranoia, obsessive compulsive disorder, gastritis, dyspepsia, leiomyoma of the uterus, infertility, and obesity. And, because of her current mental health, the spouse relies primarily on the applicant as an essential source for her overall emotional wellbeing. Moreover, the spouse relies on the applicant's employment-based medical insurance to provide coverage for her ongoing psychotherapy and prescription medications that she pursues along with herbal medicines in treating her mental conditions.

Further, the AAO notes that the applicant's spouse may experience some financial hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. Nevertheless, the cumulative effect of the emotional and medical hardship that the applicant's spouse would experience when considered with the financial

hardship that she would experience, rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

Additionally, counsel contends that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico with the applicant because she has assimilated to the American culture in the last 24 years by becoming a Lawful Permanent Resident, learning English, maintaining steady employment until 2009, paying her taxes, and contributing to her local community; has extensive family ties in the United States; emotionally and financially supports her elderly parents who are not in good health; needs continued medical treatment; has better employment opportunities in the United States; and her daughter's future is in the United States. *See I-290B Brief in Support of Appeal, supra.* Counsel submitted a statement from the spouse in which she describes her immigration status; family and social ties and activities in the United States and Mexico; financial, physical, and emotional responsibilities to her parents; the medical conditions of her parents; employment history; her own medical conditions and treatment; daughter's opportunities in the United States; and the lack of employment opportunities in Mexico. *See Letter of Support from [REDACTED] supra.* Counsel also submitted evidence of the spouse's parents' ongoing medical conditions and medications. *See Medical Letters Issued by [REDACTED], dated September 22, 2009.*

The record contains sufficient evidence demonstrating that the applicant's spouse would experience hardship if she were to relocate to Mexico. The spouse has continuously resided in the United States for almost 30 years, and has been a Lawful Permanent Resident since October 31, 2007. Although the record reflects that she has two sisters in Mexico, her other immediate and extended relatives are U.S. citizens and Lawful Permanent Residents, some of whom live in the same household or area as she. There is no indication in the record that she maintains any social or economic ties to Mexico. Also, her father has ongoing medical concerns and treatment for: Diabetes Mellitus type two, benign prostatic hypertrophy, fatty liver, and obesity; as does her mother: arterial hypertension, hyperthyroidism, osteoarthritis, hypercholesterolemia, and chronic gastritis. The spouse is extremely close to her parents: they live in the same household, she assists them with their conditions by taking them to their medical appointments, and she engages them in various activities such as going to the store and the park. Also, she assists her father with the payment of the home mortgage, and she and her brother provide their parents with living expenses. Although the record is unclear concerning the amount of physical and financial assistance that the spouse's other family members would provide to the parents in the spouse's absence, the record shows the spouse is essential to their wellbeing.

However, the record does not include any country conditions information concerning economic, political, or social conditions and employment opportunities and healthcare in Mexico or how such conditions would impact the spouse. Nevertheless, in the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico because of the duration of continuous residence in the United States; her Lawful Permanent Resident status in the United States; her strong family and social ties in the United States; the lack of strong ties to Mexico; and the seriousness of her mental health conditions and the need for ongoing treatment.

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 stated 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 this case include extreme hardship to the applicant's Lawful Permanent Resident spouse as a result of the applicant's inadmissibility; the applicant has resided in the United States for over 16 years; the applicant has maintained steady employment and filed his income taxes; statements attesting to the applicant's good moral character; and no evidence of criminal convictions. *See Letters of Support from family members, co-workers, and neighbors.* The unfavorable factors include the applicant's misrepresentation upon seeking entry to the United States; the applicant's unlawful reentry in 1995; and work without authorization.

Although the applicant's violation of immigration laws 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 his burden and the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.