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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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



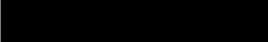
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Office: NEW YORK, NY

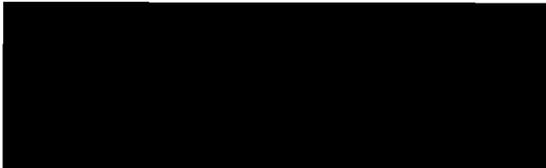
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 waiver application was denied by the District Director, New York, New York. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the underlying waiver application will be granted.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and is the daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her mother, her husband, and their child in the United States.

The district director found that the applicant failed to establish extreme hardship to her mother and denied the waiver application accordingly. *Decision of the District Director*, dated June 13, 2006. The AAO dismissed a subsequent appeal, also concluding that the applicant failed to establish extreme hardship to her mother. *Decision of the Administrative Appeals Office*, dated August 5, 2009.

Counsel has filed a motion to reopen contending that the AAO evaluated only the hardship to the applicant's mother and failed to consider hardship to the applicant's lawful permanent resident husband. Counsel has submitted additional evidence, including, but not limited to a birth certificate of the couple's U.S. citizen son, an affidavit from the applicant's husband, affidavits from a psychologist, and financial documents in support of the motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion to reopen is granted.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on June 18, 2003; two affidavits from the applicant; an affidavit from [REDACTED] affidavits from the applicant's mother, sisters, and brother; two affidavits and a letter from psychologists; a letter from the couple's landlord; letters from [REDACTED] employer; copies of tax returns, bills, and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that in February or March of 1999, she entered the United States by using a name other than her own and claimed to be a visitor when she was, in fact, residing in the United States. *Affidavits of* [REDACTED] dated July 6, 2006, and May 30, 2006. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant’s husband, [REDACTED] states that he has lived in the United States since 1995. He states he works as a bakery chef and that he works with two of his brothers. [REDACTED] states that his wife is the love of his life and that they first met when he was twelve or thirteen years old. He states that they started dating when he was twenty-two years old and that he had never seriously dated anyone before his wife. [REDACTED] states that they now have a son together. According to [REDACTED], when their son was two weeks old, he had to be operated on immediately due to a problem with his stomach. [REDACTED] states that the operation was successful and that he cannot imagine what would have happened if they lived in Mexico where the medical care is not as good. [REDACTED] also states that Mexico is unsafe because of the amount of illegal drugs, kidnappings, and violence. He contends that if he returned to Mexico with his wife, all of his dreams will be destroyed, all of his hard work will be wasted, and he will have to start all over again. He states that it is impossible for him to think about life without his wife and that if she returned to Mexico and he remained in the United States, their son would have to go with his wife because [REDACTED] long work hours. [REDACTED] states that the thought of being separated from his wife and son, or moving back to Mexico, causes him to become depressed, nervous, and extremely

anxious. He contends his wife and son are his world and he cannot imagine life without them. *Affidavit of* [REDACTED], dated August 31, 2009.

After a careful review of the entire record, the AAO finds that if [REDACTED] remained in the United States without his wife, he would suffer extreme hardship. The record contains letters from two different psychologists, corroborating [REDACTED] contention that he would suffer extreme emotional hardship if his wife's waiver application were denied. One psychologist describes [REDACTED] as being "devastated" and that the denial of her waiver application "will destroy their life." The psychologist describes the physical symptoms [REDACTED] has experienced due to his mental state, such as losing 25 pounds and having difficulty sleeping that includes a rapid heartbeat that has woken him up as well as screaming in his sleep. *Affidavits of* [REDACTED], dated August 19, 2009, and January 25, 2007. In addition, a letter from another psychologist diagnoses [REDACTED] with Major Depressive Disorder and states that [REDACTED] is currently under psychotherapy treatment. [REDACTED] psychologist states that his symptoms are severe enough that they affect all aspects of his life, affecting his work and causing him physical problems such as recurrent, severe headaches, as well as a skin condition on his hands that causes chronic itching and peeling of the skin that is caused by stress. *Letter from* [REDACTED] dated August 25, 2009. In addition, the AAO recognizes that [REDACTED] and his wife have known each other since childhood and have been together for almost their entire adult lives. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] moved back to Mexico to avoid the hardship of separation, he would experience extreme hardship. According to [REDACTED] he moved to the United States in 1995, when he was thirteen years old. [REDACTED] would need to readjust to a life in Mexico after having lived in the United States his entire adult life. In addition, the record shows that [REDACTED] has worked for the same employer since October 1998. *Letter from* [REDACTED], dated August 25, 2009. Relocating to Mexico would mean leaving his employment of over thirteen years where, according to [REDACTED] he works with two of his brothers. Moreover, with respect to [REDACTED] concerns about kidnappings and violence in Mexico, the AAO notes that both the applicant and her husband are from Jalisco, Mexico, a state to which the U.S. Department of State urges individuals to defer non-essential travel. *U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011 (advising individuals to exercise extreme caution when traveling in Jalisco). Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit and periods of unauthorized presence. The favorable and mitigating factors in

the present case include: the applicant's family ties to the United States, including her U.S. citizen mother, lawful permanent resident husband, and U.S. citizen child; the hardship to the applicant's husband and child if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

**ORDER:** The motion will be granted. The August 5, 2009 decision of the Administrative Appeals Office is withdrawn and the underlying waiver application is approved.<sup>1</sup>

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<sup>1</sup> With the motion, counsel submitted a new Form I-601 which remains adjudicated. The AAO does not have jurisdiction to adjudicate the Form I-601, but as the prior Form I-601 has now been approved, the new I-601 is moot.