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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**



H5

Date: FEB 16 2012

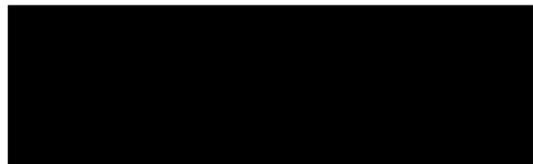
Office: CHICAGO, IL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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,

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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Immigration and Nationality Act (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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated September 1, 2009.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering the applicant's wife's immediate relatives reside in the United States, country conditions in Mexico, and the applicant's contribution to the household income. In addition, counsel contends that the applicant's wife cannot relocate to Mexico or else her status of lawful permanent resident would be considered to be abandoned.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] [REDACTED] indicating they were married on October 13, 2007; copies of the birth certificates of the couple's two U.S. citizen children; a statement from [REDACTED] documentation from the children's school; a statement from [REDACTED] parents; a letter from [REDACTED] mother's physician; letters from the applicant's and [REDACTED] employers; copies of tax returns, bills, and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Mexico and other background evidence; copies of photographs of the applicant and his family; 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 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 does not contest, that on or about May 29, 1998, the applicant presented to the U.S. Consulate in Mexico City fraudulent documents, including a job letter and pay stubs, in an attempt to procure a visa to enter the United States. The applicant's visa application was denied. According to the applicant, he entered the United States without inspection in June 1998 and it appears he continues to reside in the United States. Therefore, the applicant is inadmissible to the United States 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 wife, [REDACTED], states that she has been living in the United States for eighteen years, over half of her life. She states she has lost all ties to Mexico and that her parents and her three brothers all live in the United States. According to [REDACTED] her parents live ten minutes away and she feels an obligation as their only daughter to take care of them. She contends her seventy-year old father suffers from chronic gastritis and that her sixty-year old mother suffers from high blood pressure, cholesterol, and back problems. In addition, [REDACTED] states she has known the applicant for fifteen years and that without him, she could not properly care for their two U.S. citizen children. She states that she works full-time in the morning and that her husband works full-time in the evenings so that one of them can be home for the children. She states that even though her immediate family lives nearby, they have their own schedules and her elderly parents cannot deal with two young, active children. [REDACTED] asserts that if her husband departed the country, she would be unable to afford a babysitter and would suffer extreme financial hardship because she earns only \$650 every two weeks. She contends she would lose their home and that because her mother is a joint owner, a foreclosure would affect her mother’s credit. Furthermore, [REDACTED] contends she cannot return to Mexico to be with her husband because of the violence there. She fears her family would be an easy target for violent acts, such as kidnapping, because people in small towns assume that if you come from the United States, you have money. In addition, she contends that there is a lack of employment opportunity for upward mobility. *Statement by* [REDACTED] dated March 14, 2009.

After a careful review of the record, the AAO finds that [REDACTED] will suffer extreme hardship if her husband’s waiver application were denied. Regarding the financial hardship claim, the record

corroborates [REDACTED] contention that she earns very limited wages and that she is dependent on the applicant's wages in order to pay her monthly bills. *Letter from* [REDACTED] (stating [REDACTED] \$9.50 per hour); *Letter from* [REDACTED] dated January 12, 2009 (stating the applicant earns \$10 per hour). The record contains copies of monthly bills as well as a mortgage statement showing the couple's mortgage is \$1,501 per month. In addition, the applicant has submitted documentation that [REDACTED] would be living just above the poverty line for herself and her two children, corroborating her contention that without her husband, she would be unable to afford childcare. *2009 Poverty Guidelines (Form I-864-P)* (stating the poverty line for a family of three is \$18,310); *U.S. Individual Income Tax Return (Form 1040A)*, dated January 25, 2009 (showing she earned \$20,137 in wages in 2008). Therefore, the record shows that if [REDACTED] decided to remain in the United States without her husband, she would be raising their two minor children alone and living just above the poverty line. Considering these factors, the AAO finds that the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, if [REDACTED] moved back to Mexico, where she was born, to be with her husband, she would experience extreme hardship. The record shows that [REDACTED] has lived in the United States her entire adult life, since she was twenty-one years old. In addition, the record shows she has two U.S. citizen children who are currently five and fourteen years old. According to [REDACTED] her entire immediate family lives in the United States, including her parents and three siblings, and she no longer has any ties to Mexico. A letter from [REDACTED] mother's physician corroborates [REDACTED] contention that her mother suffers from medical conditions and requires her assistance. *Letter from* [REDACTED] dated November 4, 2008 (stating that [REDACTED] mother is being treated for uncontrolled hypertension, lipidemia, and back pain, and that "with the care and supervision of her daughter, [REDACTED] her condition may improve"). Moreover, the record shows that [REDACTED] has worked at the same company since 2001. *Letter from* [REDACTED] dated January 12, 2009. Furthermore, the AAO acknowledges [REDACTED] concerns regarding moving back to Hidalgo, Mexico, where the applicant was born and where his parents continue to reside, because it is a small town with very limited employment opportunities, if any. *Biographic Information form (Form G-325A)*, dated January 7, 2008. The record contains documentation showing that [REDACTED] has a total population of only 311 people and that the average degree of education is at the fifth grade level. *INEGI*, undated. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if she moved back to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility. The AAO therefore 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 factors in the present case include the applicant's willful misrepresentation of a material fact in order

to procure an immigration benefit and periods of unlawful employment. The favorable and mitigating factors in the present case include: family ties in the United States including his U.S. citizen wife and two U.S. citizen children; the extreme hardship to the applicant's wife and the couple's children if he were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is 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. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.