

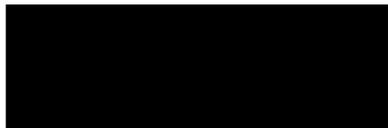
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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DATE: **JAN 27 2012** OFFICE: CHICAGO, ILLINOIS

File:



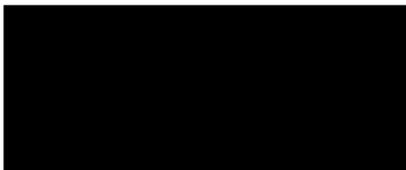
IN RE:

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, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated July 27, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship of a financial, mental and emotional, and medical nature. See *Counsel's Brief*, undated, in support of *Form I-290B*, Notice of Appeal or Motion, received August 24, 2009.

The record contains, but is not limited to: Form I-290B and counsel's brief; Forms I-601, I-485, and denials of each; hardship affidavit; two letters from a physician; medical and prescription records; applicant's affidavit; letters from sons, daughter-in-law, grandchildren, and character references; marriage and birth records; employment, pay, and tax records; 401K statement; release deed; insurance records; billing statements; and applicant's record of sworn statement. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record reflects that in 1997, to visit his dying mother in Mexico and be readmitted to the U.S. thereafter, the applicant obtained a passport and temporary lawful permanent resident status stamp by misrepresenting himself as his brother. The applicant then entered the U.S. sometime in August 1997. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).<sup>1</sup> The applicant does not contest these findings on appeal.

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<sup>1</sup> Counsel asserts on appeal that the applicant "did not leave the country and never used the fraudulently obtained stamp." See *Counsel's Brief*, undated. The applicant states on appeal: "I decided not to leave the country so I didn't use the passport with the stamp." See *Applicant's Affidavit*, dated September 23, 2009. These assertions are inconsistent with the *Record of Sworn Statement*, signed and dated by the applicant on April 8, 2008. Therein the

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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

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applicant admits that he used the passport and temporary lawful resident stamp to enter the U.S. in or about August 1997. *Id.* It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to provide any such evidence.

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 record reflects that the applicant's spouse is a 57-year-old native of Mexico and lawful permanent resident of the United States. She states that she and the applicant have been together since 1972, had their first child in 1973, entered the U.S. in 1976, had twins in 1980, and returned to Mexico later that year to care for her severely ill mother. See *Hardship Affidavit*, dated September 23, 2009. The applicant's spouse had to undergo emergency gallbladder surgery in Mexico in 1983, which she states left her infected and scarred to this day on account of the poor hospital conditions. *Id.* The applicant and his spouse legally married in April 1984 and their fourth child was born in Mexico in June 1988. *Id.* In their respective letters, sons

██████████, both describe their father as essential to holding their large and close-knit family together and describe the impact he has had on their lives and the lives of other family members. See *Letters by Sons, Orlando*, dated May 15, 2008 and ██████████, Dated May 13, 2008. The applicant's spouse states that she and her husband have been together nearly their entire lives and they cannot live apart from one another after enduring so much together over so many years. See *Hardship Affidavit*, dated September 23, 2009.

Addressing medical, mental and emotional hardship related to separation, the applicant's spouse states that her health is not good. See *Hardship Affidavit*, dated September 23, 2009. She states that she suffers from panic attacks, depression, and migraines, she underwent renal surgery in April 2009, and was more recently diagnosed with a fibroid and a cyst in her breast, the latter which terrifies her because her sister died of breast cancer in 2004. *Id.* The applicant's spouse states that when she learned that her husband needs a waiver she felt she could not breathe and suffered a panic attack. *Id.* The applicant's spouse states that she is under a physician's care for panic attacks, depression, anxiety, and migraines and that she sometimes even hears voices telling her to end her life. *Id.* In his *Physician's Letter 1*, dated May 21, 2008, ██████████, states that the applicant's spouse is undergoing "treatment for depression, anxiety, panic attacks, hyperlipidemia and migraine headaches. ██████████ has recently had a deterioration of her physical and mental well being. She has been having recurrent episodes of chest pain, migraine headaches and panic attacks." ██████████ addressing the applicant's risk of deportation, states: "It is clear that these issues are detrimental to ██████████ health." *Id.* In his *Physician's Letter 2*, dated August 12, 2009, ██████████ states that the applicant's spouse: "has been under my care during the past two years and has been treated for multiple chronic diseases including depression, anxiety, panic attacks, hyperlipidemia, migraine headaches and most recently new onset of diabetes mellitus. ██████████ has recently had a deterioration in her physical and mental well being. She has been having frequent exacerbations of panic attacks, migraine headache and uncontrolled blood sugars. ██████████ has been under a great deal of stress due to her husband's residency status with possible deportation. Unfortunately the current situation has been detrimental to ██████████ health." *Id.* Prescription records for the applicant's spouse have been submitted for Lexapro 5 mg and Simvastatin 20 mg, along with a "specialist referral" and radiology report showing that September 2009 abdominal pain resulted in a diagnosis of a "small discrete fibroid at the posterior fundees." See *Medical Records*, various dates.

Addressing economic hardship related to separation, the applicant's spouse states that she and the applicant depend on each other financially. See *Hardship Affidavit*, dated September 23, 2009. She states that if the applicant is removed, she would be unable to support him, herself, her parents, his parents, and pay for the home they have both worked so hard for over so many years. *Id.* In an *Employment Letter*, dated May 8, 2008, ██████████ Managing Partner, states that the applicant has been employed by the restaurant since November 1986 and states that he has known the applicant for about twenty-one years as an honest and hardworking man. The applicant's spouse states that she has worked for the Hilton Suites for more than sixteen years and is employed as Supervisor of Housekeeping. *Id.* An *Employment Letter*, dated August 22, 2009 from ██████████ confirms that the applicant's spouse's employment.

The applicant's spouse states that in addition to expenses for their own home mortgage, insurance, taxes, utilities, auto insurance, gasoline and auto maintenance, food, clothing, charitable donations, and ordinary living expenses, she and the applicant provide necessary monthly support for their ill and elderly parents. *Id.* A monthly expense list and supporting billing statements have been submitted for the record. The evidence in the record demonstrates that the applicant's salary alone is not sufficient to pay all of the household expenses and continue supporting both sets of parents in the event of the applicant's removal.

The AAO has considered cumulatively all assertions of separation-related hardship including the nearly forty years the applicant and his spouse have been together and medical and physical, mental and emotional, economic, familial and social implications to the applicant's spouse. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. lawful permanent resident spouse would suffer extreme hardship if separated from the applicant by his removal to Mexico.

Addressing relocation-related hardship, the applicant's spouse states that relocating to Mexico would result in the loss of her lawful permanent resident status for which she waited so long to attain. See *Hardship Affidavit*, dated September 23, 2009. The applicant's spouse states that she would lose her family home, long-standing employment, seniority, and health insurance benefits, needed medical treatment with trusted physicians, separation from her close church community, and separation from her four children, son-in-law, three daughters-in-law, and ten young grandchildren, all of whom are U.S. citizens or lawful permanent residents and to whom she is very close. *Id.*

The AAO has considered cumulatively all assertions of hardship including the age of the applicant and his spouse and the nearly forty years they have been together, the emotional, mental, physical, medical, and economic implications of relocating to a country in which the applicant's spouse has not lived for more than two decades, the likelihood she would lose her lawful permanent resident immigration status, the separation she would suffer from her children and grandchildren who are an essential part of her life, and separation from her ties to her church, the community, her physicians who are actively treating her for medical and mental/emotional conditions, and others in the United States. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. lawful permanent resident spouse would suffer extreme hardship if she were to relocate to Mexico to be with the applicant.

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 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 states 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 the present case include extreme hardship to the applicant's lawful permanent resident spouse as a result of the applicant's inadmissibility; the applicant's significant family ties, particularly to her four children and ten grandchildren - all U.S. citizens or lawful permanent residents residing in the United States; the age of both the applicant and his spouse and their nearly forty years together; the applicant's lack of criminal history; significant number of attestations by others to his good moral character and essential presence in the community. The unfavorable factors are the applicant's immigration violations.

Although the applicant's violations of immigration law are significant and 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 application is approved.