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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
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Services

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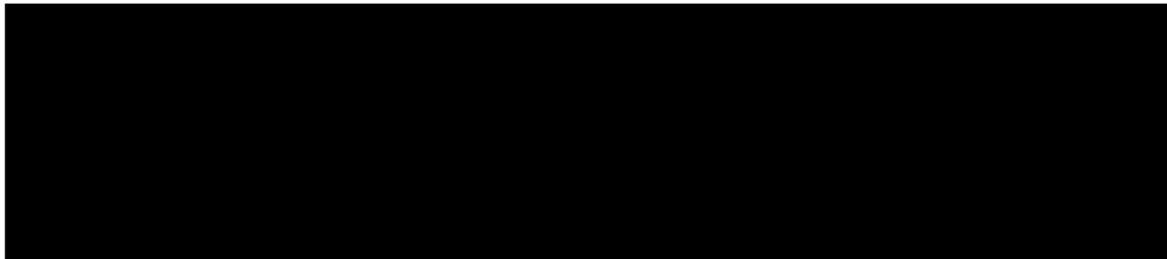
FILE: 

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,

for

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Baltimore, Maryland. The matter 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 procuring an immigration benefit to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. Citizen husband. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her U.S. Citizen spouse and her lawful permanent resident father and mother.

In a decision dated July 14, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relatives would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Notice of Decision of the Field Office Director, July 14, 2009.*

On appeal, counsel for the applicant contends that the applicant's qualifying relatives would experience extreme hardship if the applicant's waiver application is denied, and submitted additional evidence related to the medical condition of the applicant's father and husband, and other supporting documentation.

The record contains the following documentation: a brief filed by the applicant's attorney; an affidavit filed by the applicant's father; medical documentation of the applicant's father; a letter regarding the emotional condition of the applicant's spouse; evidence that the applicant's siblings attend school; letters of reference; and other evidence submitted in support of the applicant's waiver application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

Section 212(i) of the Act provides that:

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 or, in the

case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's husband and the applicant's parents are qualifying relatives in this case. 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 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 July 1990, the applicant attempted to enter the United States, and presented a paystub from her employment in Mexico which had been altered. The applicant subsequently entered the United States without inspection, and has resided in the United States since 1990. She currently lives with her U.S. Citizen spouse, in the same locality as the applicant’s permanent resident parents.

The applicant’s father, a qualifying relative, was born in 1941, and is a lawful permanent resident of the United States. He became a lawful permanent resident in 1990. The applicant’s father lives with his wife, and has seven children.

The record shows that the applicant’s father was diagnosed with prostate cancer and with multiple myeloma. The applicant’s father is currently undergoing treatment at the Johns Hopkins Hospital, and is awaiting bone marrow transplant candidacy at that hospital, and has a limited life expectancy. *See letter of [REDACTED]*, dated July 30, 2009. The record includes extensive documentation regarding the applicant’s father’s medical conditions. The applicant’s father states that the applicant has to drive him to his appointments and runs errands on a daily basis. The applicant talks to her father’s doctors about his illnesses, and manages his care. The applicant’s father states that his wife does not drive and that his other daughter is busy with her restaurant business. *See Affidavit of [REDACTED]* dated September 3, 2009. A medical record indicates that throughout the applicant’s father’s illness, the applicant has taken on a central role in her father’s health care and that she is often the point of contact for his treating physicians, noting that the applicant’s involvement and support of her father’s health care have contributed greatly to any improvements and progress in his health. *See letter of [REDACTED]* dated August 3, 2009.

The applicant’s counsel states that both of the applicant’s parents are unemployed, and that the applicant’s parents rely heavily on the financial support of the applicant and the applicant’s sister,

who owns a restaurant. The applicant's counsel contends that the applicant's father will suffer economic hardship if the applicant's waiver application is not approved. *See Brief of [REDACTED]*, dated September 3, 2009. The applicant contends that she is the eldest child in the family, and that she helps support her elderly parents and younger siblings. *See Affidavit of [REDACTED]* dated January 22, 2008. As evidence of the applicant's support for her family, the record includes copies of the applicant's federal income tax returns, in which she claims her younger sibling as a dependent. Further evidence of the applicant's economic support to her father includes an affidavit filed by the applicant's parents, which states that the applicant has been providing them with financial support on a monthly basis in the amount of at least \$400. *See Affidavit of [REDACTED]* dated March 20, 2006. The applicant's sister states that she and the applicant have supported their parents and younger siblings over the past 16 years. *See affidavit of [REDACTED]*, submitted February 21, 2008. The record further includes a statement from a non-relative, [REDACTED], who is a Major in the U.S. Army, Judge Advocate General. [REDACTED] states that the applicant has assisted with the caring, transporting, nursing, and feeding of the applicant's cancer-diagnosed father, and that the applicant has been supporting her father financially. *See Statement of [REDACTED]*, dated August 19, 2009.

The applicant's counsel contends that returning to Mexico with the applicant is not an option for the applicant's father. Four of the applicant's siblings are lawful permanent residents, although two are currently studying at the university level in Mexico. Two of the applicant's siblings did not immigrate to the United States, and are residing in Mexico. The applicant's other two siblings, lawful permanent residents, reside in the same locality as the applicant and her parents; the older sibling runs a restaurant, and the other sibling is in college.

As verified in the record, the applicant's father suffers from serious medical conditions, and, according to the applicant's counsel, the applicant's father needs the medical treatment that he is receiving in the United States and he would not be able to get the same type of treatment in Mexico.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her Lawful Permanent Resident father would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. As extreme hardship to the applicant's father has been established, it is not necessary to determine whether the applicant has established extreme hardship to her U.S. Citizen spouse.

However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the hardships the applicant's U.S. Citizen spouse and lawful permanent resident parents would face if the applicant were to reside in Mexico, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; letters of reference from acquaintances of the applicant; and the passage of more than twenty years since the applicant's entry to the United States. The unfavorable factor in this matter is the applicant's misrepresentation of a material fact in a prior immigration matter.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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