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



U.S. Citizenship
and Immigration
Services

H5

[Redacted]

DATE: JUL 02 2012 Office: SAN BERNARDINO, CA FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:
[Redacted]

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 Field Office Director, San Bernardino, California, 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident and he has four U.S. citizen children. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated April 21, 2010.

On appeal, counsel asserts that the field office director failed to provide the proper legal analysis in denying the application. *Brief in Support of Appeal*, dated June 17, 2010.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, statements from the applicant's spouse and son, and letters of support. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 28, 1981, the applicant presented a counterfeit lawful permanent resident card while seeking admission to the United States. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that:

- (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 her children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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.

Counsel states that the applicant's spouse has three U.S. citizen sons and one U.S. citizen daughter, she cares for her mother, she cares for her grandchildren and all of her family resides in the United States. Counsel also contends that the applicant's spouse would be unable to maintain her lifestyle outside the United States as economic, political and social conditions are commonly known to be unsatisfactorily poor in Mexico. The applicant's spouse reported in her psychological evaluation that she has no family in Mexico who can help her, her brother there is very poor and she has been in the United States for most of her life. The applicant's spouse also states that she has to care for her diabetic mother, she cooks for her, and she cannot leave her and go to Mexico. The applicant's son states that his mother cares for his son and also for her mother.

Counsel states that the applicant has Hepatitis C, he has been required to have surgery and the applicant's health and well-being are directly linked to his spouse's health and well-being. The applicant's medical records reflect that he has a history of Hepatitis C and symptomatic cholelithiasis.

The psychologist states that one of the applicant's sons suffers from a cocaine habit and he lives with his parents; drug addicted children do far better with parental support than without it; the applicant's spouse has anemia and is on medication; half of Mexico lives in poverty according to the World Bank; access to health care would be nearly impossible given the likelihood of living in poverty; the family's health problems would likely increase; and more than half of the people living in poor areas of Mexico are victims of crime.

Counsel states that Mexico is probably the most dangerous country in the Western Hemisphere and the U.S. Department of State has issued a travel alert for Mexico which addresses the increased dangers of living in and traveling to Mexico. The applicant's son states that it will be difficult for his mother to reestablish a life in Chihuahua Juarez and the extreme nature of the crimes and kidnappings of U.S. citizens terrifies his mother.

The AAO notes the February 8, 2012 U.S. Department of State Travel Warning for Mexico which details safety issues in the country. It states, in pertinent part:

Chihuahua: Juarez and Chihuahua are the major cities/travel destinations in Chihuahua....You should defer non-essential travel to the state of Chihuahua. The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has one of the highest murder rates in Mexico. The Mexican government reports that more than 3,100 people were killed in Ciudad Juarez in 2010 and 1,933 were killed in 2011. Three persons associated with the Consulate General were murdered in March 2010. The state of Chihuahua is normally entered through Columbus, NM, and the El Paso, Fabens and Fort Hancock, TX, ports-of-entry. There have been incidents of narcotics-related violence in the vicinity of the Copper Canyon in Chihuahua.

While the AAO notes counsel's claims of economic hardship, the record does not include substantiating documentary evidence that country conditions in Mexico would result in financial hardship for the applicant's spouse. The record does not include evidence of medical hardship for the applicant's spouse. However, the record reflects that the applicant's spouse has family ties in the United States and she helps care for her mother and one of her grandchildren. In addition, there are legitimate safety concerns. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she relocated to Mexico.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's role in the family business is critical, the applicant's spouse's role in the business is small because she has to take care of her grandchildren, and she is completely dependant on the applicant for her financial, physical and emotional needs. The psychologist states that the applicant's spouse is the primary caretaker of her mother and she does not work regularly in order to care for her mother. The psychologist states that the applicant has Hepatitis C, his condition requires treatment or it could become life-threatening, his financial situation would be precarious in Mexico, his life may be in danger due to his inability to afford medical care, and the applicant's spouse would fear that he would succumb to his illness.

The psychological evaluation indicates that the applicant's spouse is suffering from Adjustment Disorder of Adult Life with Mixed Anxiety and Depressed Mood, and that a prolonged separation would cause her to develop a full Major Depressive Disorder. To reach her conclusions regarding the mental health status of the applicant's spouse, the psychologist relied, in part, on the following psychometric instruments: Beck Depression Inventory II, Beck Anxiety Inventory, Achenbach Adult Self-Report and Achenbach Adult Behavior Checklist. Based on the record before it and noting that the applicant and his spouse have lived together for more than 30 years, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in

determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) 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).

Id. at 301.

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 adverse factors in the present case are the applicant's entry without inspection, unauthorized period of stay, unauthorized employment and his May 13, 1976 drunk driving conviction. The AAO notes the serious nature of his conviction. However, he has not had a conviction since 1976 which indicates that he no longer presents a risk. The AAO also notes that the applicant has multiple other arrests, but he has not been convicted of any crimes based on these arrests and the arrests occurred over 25 years ago.

The favorable factors are the applicant's U.S. citizen spouse and children, extreme hardship to the applicant's spouse and payment of taxes.

The AAO finds that the criminal and immigration violations committed by the applicant are serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.