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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

[redacted]

H5

Date: JUL 23 2012 Office: MEXICO CITY FILE: [redacted]

IN RE: [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), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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,

for Marin Tinsin

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without being admitted in 1987. In January 1995, the applicant filed the Form I-589, Request for Asylum, claiming to be a native and citizen of Guatemala. In July 1997, the applicant was ordered excluded and deported. The applicant's appeal was dismissed by the Board of Immigration Appeals (BIA) on March 18, 2002 and a subsequent motion to reopen was denied by the BIA on October 17, 2002. The applicant did not depart the United States until May 2006. The applicant was thus 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 having attempted to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility to reside in the United States with her U.S. citizen spouse and children, born in 1987, 1992 and 2003.

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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated June 15, 2010.

On appeal, counsel for the applicant submits the following: a brief; affidavits from the applicant and her spouse; medical and academic documentation pertaining to the applicant's children; financial documentation; employment verification pertaining to the applicant's spouse; documentation with respect to country conditions in Mexico; and copies of previously submitted documents with respect to the Form I-601 application. The entire record was reviewed and considered in rendering this decision.

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.
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> . . . .
>
> (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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.

Section 212(a)(9) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

Regarding the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, counsel contends that the applicant was a victim of immigration fraud related to the asylum application and was never aware that notarios had fraudulently written her place of birth as Guatemala and altered her birth certificate to that effect. Counsel further declares that the applicant was ignorant of the law and blindly trusted the notaries and signed paperwork that was in English, which she did not read or understand, and she believed that the notaries had filled out everything truthfully. *See Form I-290B, Notice of Appeal*, dated July 13, 2010.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The record establishes that on at least three separate occasions, the applicant declared that she was born in Guatemala. Specifically, the For I-589, executed by the applicant under penalty of perjury on December 27, 1994, outlined that she was born in Escuintla, Guatemala and her nationality at birth and at present was Guatemalan In addition, the Form G-325A, Biographical Information, executed by the applicant under penalty of perjury in December 1994, listed her country of birth as Guatemala and her nationality as Guatemala. Moreover, on the Form I-765, Application for Employment Authorization, signed under penalty of perjury on December 27, 1994, the applicant listed her country of birth as Guatemala and her country of citizenship/nationality as Guatemalan.

The applicant, on multiple occasions, signed documentation, under penalty of perjury, outling a country of birth and nationality/citizenship that was not in fact true, in order to obtain asylum in the United States. The applicant had the duty and the responsibility to review all forms and statements (and obtain translations if any questions on the forms were not clear to her) prior to signing. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the U.S. citizen children can be considered only insofar as it results in hardship to a 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-Moralez*, 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.

The applicant's U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while the applicant continues to reside abroad due to her inadmissibility. In a declaration, the applicant's spouse explains that he breaks down and cries when there is no one around because his family is part of him and he needs them in the United States. The applicant's spouse details that his wife is his companion and the love of his life and provides him with moral and social support, and separation from her is causing him hardship. The applicant's spouse further explains that his daughters reside in the United States with him while his son is living

with his mother in Mexico because he works long hours and he cannot care for his youngest child, and such an arrangement is causing him hardship. He notes that his son refuses to move back to the United States because he is very attached to his mother and he does not speak English. Further, he contends that his daughters miss their mother very much and their sadness is causing him hardship. Finally, the applicant's spouse details that although he is gainfully employed, he is falling behind on the house payments as he is supporting two households, one on the United States and one in Mexico. As a result, he contends that he can rarely afford to travel to Mexico to visit his wife and son. *Supplemental Declaration of* dated August 2, 2010. In a separate statement, the applicant's spouse notes that he and his wife started dating in 1985, they started living together in 1987 and they have been married since 1996. *Declaration of* dated August 31, 2007.

In support, a letter has been provided from the applicant's spouse's employer, outlines the hardships the applicant's spouse is experiencing as a result of long-term separation from his wife. notes that the applicant's spouse, employed with the company for over 18 years, is unable to focus on his work because he is distraught and distressed. further outlines that the applicant's spouse has been a mother and father to his 2 young daughters and the burden of being alone in the home, raising his daughters, keeping the house and carrying heavy responsibilities as manager and supervisor for the company, without the help and companionship of his wife, is causing him hardship. *Letter from* dated October 9, 2007. In addition, evidence of the financial contributions the applicant's spouse has made to his wife in Mexico has been submitted. Finally, letters in support have been provided from the applicant's daughter detailing the hardships they and their father are experiencing as a result of the applicant's inadmissibility.

The record establishes that the applicant and his spouse have been together for over 25 years. They have three U.S. citizen children together. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse. Thus, based on a thorough review of the record, and in particular considering the length of the relationship between the applicant and her spouse and the additional emotional hardship separation brings about, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship.

The applicant's spouse contends that he would experience hardship were he to relocate abroad to reside with his wife due to her inadmissibility. To begin, the applicant's spouse explains that he has been residing in the United States since 1985, when he was 18 years old, and he no longer has ties to Mexico. He further contends that he has lived in the same community since 1992 and has been gainfully employed since 1989 with the same employer and he is thus accustomed to life in the United States. Were he to relocate abroad, he contends that he would not be able to support himself and his family due to the poor country conditions. In addition, he fears that he would lose his home were he to relocate to Mexico as he would not be able to afford the mortgage payments. *Supra* at 2-4. Moreover, counsel references the problematic safety concerns in Mexico. *See Additional Evidence in Support of Form I-290B "Notice of Appeal" Regarding Form I-601*, dated August 10, 2010.

The record reflects that the applicant's U.S. citizen spouse has been living in the United States for over two decades. He would have to leave his home, his long-term gainful employment as a his friends and his community. Finally, the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, Jalisco, the applicant's birth place, due to violence and criminal activity. *Travel Warning-Mexico, U.S. Department of State,* dated February 8, 2012. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. 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 he 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States, community ties, the apparent lack of a criminal record, the payment of taxes, home ownership and numerous letters in support. The

unfavorable factors in this matter are the applicant's fraud and/or willful misrepresentation, as outlined above, and periods of unauthorized presence while in the United States.

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 his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.[1]

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.

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[1] The AAO notes that the applicant also requires an approved Form I-212, Application for Permission to Reapply for Admission to the United States After Removal (Form I-212), based on her departure in 2006 under an order of exclusion. The applicant's Form I-212 was denied on June 15, 2010 as a matter of discretion based on the denial of her Form I-601, but no appeal of that decision was submitted by the applicant. As the AAO has determined that her Form I-601 should be approved, the director shall reopen the Form I-212 and render a new decision on its merits.