

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)

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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: JUN 15 2012

Office: HARLINGEN

[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)

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,

*Maria Feli*

*f*

Perry Rhew  
Chief, Administrative Appeals Office

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

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 having procured admission to the United States through fraud or misrepresentation. She does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to remain in the United States with her lawful permanent resident spouse and child. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director, April 2, 2010.*

On appeal, the representative for the applicant provides additional documentary evidence that separation will impose extreme hardship on a qualifying relative. New documentation includes: a hardship statement; a psychological evaluation; photographs; school records; and country condition information. This evidence augments a record containing documents submitted in support of the Form I-601 and the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485), including, but not limited to: a tax return and receipts for rental income; letters of support; marriage, divorce, and birth certificates; school records; and medical records. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident

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 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 record shows the applicant obtained a Border Crossing Card (BCC) on March 23, 2000, but that she claimed in her 2008 adjustment application to have resided in the United States since 1999 and was married to her husband, a lawful permanent resident residing in Texas, since 1998. Noting that the applicant had already taken up residence before applying for the visitor's visa,<sup>1</sup> the field office director concluded that the applicant misrepresented her immigrant intent in applying for and receiving a nonimmigrant visa and procuring admission as a visitor for pleasure. The record does not indicate where or when she entered the country, only that the applicant claims to have been inspected and admitted using her BCC and to have remained here since then.

The applicant's husband contends he will suffer emotional and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. He claims that stress brought on by thoughts of possible separation from the applicant, to whom he has been married for 13 years and with whom he has a nearly 10 year-old son, has left him depressed and anxious. At almost 70 years old, he notes being devastated by the prospect his wife will depart and leave him responsible for a young child, and the record substantiates his concerns.

The qualifying relative states separation will represent loss of the wife whom he married in 1998 and with whom he had a son in 2002. He claims that her uncertain immigration status has caused him to have a nervous breakdown, with appetite loss, intestinal problems, and insomnia severe enough that he sought professional help. A 2010 psychological evaluation diagnosing him with depressive disorder and anxiety disorder confirms that his chief concerns regarding possible removal of the applicant are his son's well-being -- as his wife is the child's primary caregiver -- and his wife's safety, due to violence in the area where she grew up and to which she would return. The record shows that his role as family provider is balanced by the applicant's role as homemaker, including parenting their son and maintaining both her son and spouse on special diets. The qualifying relative claims he has high cholesterol and that his son has digestive problems, but only the former condition is documented. He claims that his work does not leave him much time at home and is, therefore, worried what will happen to his son without a mother to care for him. After observing that his son was at an age "when he needs more of his mother," the applicant's husband notes his own advanced age as a reason he fears for his son's future if his wife is deported: "my son will probably be left alone if something will happened [sic] to me." According to the psychologist, the applicant's husband has no serious health problems, other than the stress-related issues that caused him to seek

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<sup>1</sup> As the record shows that she and her qualifying relative married in Brownsville, Texas, on November 28, 1998, the applicant may have begun residing here even earlier than indicated when she sought to adjust.

help and high cholesterol for which he is taking prescription medication. While the applicant's husband appears physically able to visit his wife in Mexico to ease the pain of separation, we note that his concern about violence there would make it problematic for him to visit, particularly where travel would involve placing their son in dangerous circumstances in order for him to see his mother.

As for the predicted financial hardship, the record shows the qualifying relative is a carpenter who supports his family from rental income provided by two apartment buildings he owns, but who states that his wife takes care of the units and, when he is away on other business, collects rent. The record is silent regarding these business trips – frequency, purpose, duration, cost -- as well as about the extent of the applicant's managerial responsibilities. Although unable to quantify the economic consequences of the applicant's removal, the AAO recognizes that she contributes to the household through child care and managing the apartment businesses. We also note that, while the applicant's husband describes a support network that might be available to help while he adapts to living without his wife, this network would not offer a solution to the permanent bar on his wife's immigration. And, although details are lacking as to the applicant's work history or job prospects in Mexico, information published by the U.S. government suggests that she may have difficulty supporting herself where more than 25% of the labor force may be underemployed and one of the top priorities is job creation. *See CIA World Factbook—Mexico*, April 13, 2012. The totality of the circumstances surrounding the applicant's prospective departure establishes that, without her continued presence in the United States, her husband will experience hardship that is extreme.

The applicant's husband also contends he would suffer extreme hardship in the event he relocated to Mexico with the applicant. The record shows that he is a lawful permanent resident (LPR) who immigrated in 1970 and now claims extensive ties to the United States: besides a 90 year-old LPR mother and three siblings – two naturalized U.S. citizens and one LPR – he claims that his five adult children all live nearby. The psychologist notes the qualifying relative fears losing his livelihood, if he moves abroad, although the record does not indicate how his absence would impact income generation by his rental properties. However, in a February 2012 Travel Warning, the U.S. Department of State (DOS) substantiates his fears about the dangers of drug-related violence:

[...T]he Mexican government has been engaged in an extensive effort to counter TCOs [transnational criminal organizations] which engage in narcotics trafficking and other unlawful activities throughout Mexico. The TCOs themselves are engaged in a violent struggle to control drug trafficking routes and other criminal activity. As a result, crime and violence are serious problems throughout the country and can occur anywhere.

....

According to the most recent homicide figures published by the Mexican government, 47,515 people were killed in narcotics-related violence in Mexico between December 1, 2006 and September 30, 2011, with 12,903 narcotics-related homicides in the first

nine months of 2011 alone. While most of those killed in narcotics-related violence have been members of TCOs, innocent persons have also been killed.

....

The rising number of kidnappings and disappearances throughout Mexico is of particular concern. Both local and expatriate communities have been victimized. In addition, local police have been implicated in some of these incidents.

....

**Tamaulipas:** You should defer non-essential travel to the state of Tamaulipas.

....

**Zacatecas:** You should defer non-essential travel to the state of Zacatecas except the city of Zacatecas where you should exercise caution.

*Travel Warning-Mexico, U.S. Department of State, dated February 8, 2012.*

The AAO observes that Matamoros, Tamaulipas, where the applicant was born, is specifically mentioned in the warning, as is her husband's home region, Zacatecas state. Based on a totality of the circumstances, the AAO concludes that the applicant has established that a qualifying relative would suffer extreme hardship were he to relocate abroad to reside with the applicant.

The documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse 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.

Review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse 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. 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-Moralez*, 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 extreme hardships the applicant's husband and child 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 lack of any criminal record; her volunteer work and pursuit of a high school equivalency degree; support letters from family, friends, and community members; and her more than 12 years of residence in the United States. The unfavorable factors in this matter are the applicant's procurement of a visa and U.S. admission by fraud.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of 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.