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

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DATE: MAR 13 2012 OFFICE: CALIFORNIA SERVICE CENTER



IN RE:



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 PETITIONER:



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 that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Director, California Service Center, 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. The applicant 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 admission into the United States by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of his inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may live in the United States with his spouse and family.

In a decision dated April 17, 2009, the director determined the applicant had failed to establish that his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that the director misapplied the extreme hardship standard in his case, and that the evidence in the record establishes the applicant's spouse would experience extreme hardship if the applicant were denied admission into the United States. In support of these assertions the record contains an affidavit written by the applicant's wife, medical history and school records, financial and employment evidence, and family-member immigration and citizenship information.

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 on April 25, 1998, the applicant attempted to gain admission into the United States using a fraudulent lawful permanent resident document. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure admission into the United States by willfully misrepresenting his identity. Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act provides:

- (1) 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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 BIA 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 is married to a U.S. citizen. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

The applicant's spouse and counsel refer to hardship the applicant's U.S. citizen children would experience if the waiver application is denied. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's U.S. citizen spouse.

The applicant's wife states in an affidavit that she and the applicant have been together for over seventeen years, and that they have three children together (now 5, 11 and 16 years-old). She states that she and her husband are committed to each other, and that their family is very close. Her parents live nearby, and she has a brother and three sisters who live in the United States with their families. Four of the applicant's sisters and their families also live in the United States. The applicant's wife states that their oldest child had asthma when he was younger, and that their 11 year-old has asthma and requires medication and an inhaler. She states that her husband's employment provides the family with medical insurance, and that they would lose coverage if the applicant had to move to Mexico. She states further that, although she works, she earns only about \$2000 a month. She and her husband own a home together with other family members, and she states she would be unable to pay the mortgage without her husband's additional income. The applicant and his wife also own two cars that she feels she would be unable to pay for without the applicant's financial assistance. The applicant's wife indicates she would have to work more if her husband moved to Mexico, and that as a result, she would be unable to spend as much time with their children. The applicant's wife also indicates that the applicant's immigration situation is causing her to feel depressed. She states that she would become further depressed if she moved to Mexico because she has not lived there since she was 3 years-old; her husband is from a small town in Jalisco, Mexico; her entire family lives in the United States; and she does not believe the

family would have enough money to live on in Mexico. She states further that their children would not have access to medical care in Mexico, and that the applicant's town has only elementary school facilities. She states that their children do not speak Spanish fluently, that she worries for the family's safety in Mexico, and that she wants their children to have a better life than the life they would have in Mexico.

The record contains home ownership information reflecting the applicant and his wife own property as joint tenants with another couple and evidence that the applicant's husband owes \$355.00 a month on a car loan. Employment verification, earnings statements and federal income tax form evidence reflect that the applicant is employed full-time as a painter and the applicant's wife works full-time at a dental office. The record additionally contains medical insurance information reflecting that the applicant and his family are covered by health insurance, and the record contains numerous medical records for the entire family.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience emotional and financial hardship that rise beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated with their family to Mexico. Although the applicant's wife is originally from Mexico, she has lived in the United States with her family since she was 3 years-old. Their three school-aged children have lived their entire lives in the United States, and the applicant's wife is experiencing emotional distress due to worries that their health and welfare would deteriorate in Mexico, that their safety would be at risk, and that they would be unable to adjust or go to school in Mexico due to their limited Spanish language capabilities. In addition, the applicant's wife would lose her employment and income if she left the United States. The combined evidence establishes emotional and financial hardship that rises above that normally experienced upon removal or inadmissibility, if the applicant moves with her family to Mexico.

The evidence establishes that the applicant's wife would also experience emotional and financial hardship beyond that normally experienced upon removal or inadmissibility, if she remains in the U.S., separated from the applicant. Property and medical evidence demonstrate that the applicant and his wife co-own property with another couple, and that one of their children suffers from asthma. Employment evidence reflects the applicant's wife earns about \$2000 each month working full-time at a dental office. Her earning statements do not reflect deductions for health insurance. The applicant earned \$21 per hour as a painter, and his employer provided family health insurance coverage. Based on this evidence, it is reasonable to conclude that the applicant's wife would be unable to pay for health insurance, a \$1250 monthly mortgage payment, as well as vehicle and childcare expenses for three children without the applicant's financial help. The applicant's wife additionally worries about their children no longer having health care coverage, and she fears that the couple she co-owns property with will lose their home if she is unable to pay her share of the mortgage payments. The cumulative evidence establishes emotional and financial hardship that rises above that normally experienced upon removal or inadmissibility.

The AAO finds further that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factors in this matter are the applicant's 1998 attempt to gain admission into the U.S. by willfully misrepresenting his identity. The favorable factors are the hardship the applicant's wife, children and family would face if the applicant is denied admission into the United States, the applicant's good moral character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violation committed by the applicant is very serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act. The Form I-601 appeal will therefore be sustained.

ORDER: The appeal is sustained.