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



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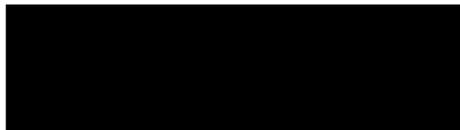
Applicant:



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,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Portland, Oregon and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application is approved. The matter will be returned to the Field Office Director for continued processing consistent with this decision.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant 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. See *Decision of the Field Office Director*, dated February 10, 2010.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, or in the alternative that her U.S. citizen spouse will suffer extreme hardship if a waiver is not granted. See *Form I-290B*, Notice of Appeal or Motion and Counsel's Brief, both received March 15, 2010.

The record includes, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; hardship statement; psychological evaluation; character reference letters; marriage, birth, employment, financial, and school-related records; family photos; country conditions documents; and the applicant's sworn statement and visa application. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in or about May 2000. During her November 17, 2009 adjustment of status interview, she stated that prior to her 2000 entry she applied for a nonimmigrant visa at the U.S. Consulate in Ciudad Juarez. The applicant testified that she represented herself on the visa application and to a consular officer as unmarried and childless when in fact she was married to a lawful permanent resident and had a U.S. citizen child, both residing in the United States. The Field Office Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

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.

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are “material” is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now United States Citizenship and Immigration Services) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in proper determination that he or she be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The record reflects that the applicant falsely represented herself as unmarried and childless on a nonimmigrant visa application and to a consular officer in 1999. Counsel contends that the applicant’s misrepresentations were not material because the visa was denied anyway and the applicant derived no immigration benefit. Irrespective of the fact that the visa was not granted to the applicant, the AAO notes that pursuant to section 212(a)(6)(C)(i) of the Act, an individual “seeking to procure” a visa, other documentation, or admission into the United States or other benefit provided under this Act by fraud or willful misrepresentation is inadmissible. As such, by failing to disclose that she was married, that her husband had been a U.S. lawful permanent resident since 1988, that their U.S. citizen child was born in the United States in 1997 and that they were both currently residing in the United States, the applicant clearly cut off a line of inquiry concerning her lack of ties to Mexico and her intent to immigrate to the United States. The applicant is inadmissible as an intending immigrant on the true facts and thus inadmissible based on her material misrepresentation. The record supports the Field Office Director’s finding of inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (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 applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's 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 reflects that the applicant’s spouse is a 48-year-old native of Mexico and citizen of the United States who has been married to the applicant since January 1997. He writes that he loves his wife with all his heart and relies on her very much. The applicant’s spouse explains he can barely read and write and his inability to manage the family’s bills led to bankruptcy. He states that the applicant has since managed the finances, the children and keeping the household in order. The applicant’s spouse reveals that he lost his mother as a small boy, after which his father drank heavily and physically abused him. He himself began drinking very young and by his teens drank heavily particularly in response to trauma like his sister’s violent murder. The applicant’s spouse asserts that he took his last drink in December 2007 and has since become healthier, lost 50 pounds, has become more patient with his children and wife whom he credits with keeping him from relapsing by her constant support. He notes that he is certain he would relapse if she is removed because of the unbearable sadness and loneliness of being without her, and knows he would be unable to care properly for the children or manage the household. [REDACTED], Ph.D. confirms that without his wife’s presence, the applicant’s spouse’s sobriety would be at high risk. [REDACTED] explains that losing his mother at six, abuse by his father, running away and living on the streets, and his sister’s murder have resulted in unresolved grief and fear that still strongly affect the applicant’s spouse today. [REDACTED] relays that when the applicant’s spouse cannot reach his wife by phone during the day he is overcome with anxiety and unreasonable thoughts that she has been harmed or is in danger. [REDACTED] contends that were the applicant’s spouse to suffer another major loss such as the removal of his wife, he would be at risk for depression, increased anxiety symptoms, alcohol and substance abuse, and decreased capacity to function.

The applicant's spouse writes that he fears losing his job as a result of being unable to cope with separation from his wife, which would make it impossible to provide for the even the basic needs of himself and his sons, let alone supporting the applicant in Mexico. He explains that he would also lose the health insurance on which he relies. The applicant's spouse detailed that one of his sons has suffered ear infections since infancy requiring the insertion of tubes in addition to suffering a heart murmur and poor vision requiring glasses for life.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including his lengthy marriage of more than fifteen years to the applicant; his emotional and physical reliance upon her to help maintain his sobriety, care for their children, and manage the finances and household in light of his childhood history, near illiteracy and bankruptcy; his fear and anxiety when unable to reach the applicant by phone and how that would translate were she in Mexico, where country-conditions documents provided by counsel establish high rates of crime and violence, specifically in Zacatecas, where the applicant is from; and the likelihood he would be unable to maintain his employment and support his family without his wife's daily support. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation-related hardship, the applicant's spouse reports that he has resided in the United States for decades and that both his and the applicant's ties to Mexico are tenuous at best. He explains that his father in Mexico abused him as a child, causing him to run away and live on the streets, and has never worried about him since. The applicant's spouse states that his wife's parents in Mexico gave her away when she was an infant and have had nothing to do with her since. He adds that she was raised by her grandmother who lives in Texas, is very old and ailing, and would benefit from the continued presence of the applicant, himself and their children in the [REDACTED] reports that relocating to Mexico evokes for the applicant's spouse feelings of sadness and anger because of the losses and abuse he has suffered. [REDACTED] relays that the applicant's spouse fears being unable to secure employment in Mexico and counsel reiterates that he is barely literate and at near 50-years-old will be competing for manual labor work with men half his age. In addition to submitted country conditions documents, the AAO has reviewed the State Department's *Mexico Travel Warning*, dated February 12, 2012, which confirms that violent crime such as homicide, gun battles, kidnapping, carjacking highway robbery, and drug-related violence are serious problems throughout the country, including in Durango and Zacatecas from which the applicant's spouse and the applicant, respectively, hail.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his lengthy residence in the United States and close ties thereto; adjustment to a country in which he has not lived for decades and wherein he suffered great abuse and loss; his U.S. home ownership and long-term gainful employment; loss of health insurance for himself and his children; economic, health-related, and educational concerns regarding Mexico; his emotional/psychological well-being and potential to relapse with alcohol; and significant safety concerns for himself and his family. Considered in the aggregate, the

AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Mexico to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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 BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse and children as a result of the applicant's inadmissibility; the applicant's significant U.S. community ties; numerous attestations by others to her good moral character; home ownership; the applicant's coursework at Portland Community College; and the apparent lack of a criminal record. The unfavorable factors are the applicant's immigration violations, including her 1999 misrepresentation on a visa application and to a consular officer, as outlined in detail above, her subsequent U.S. entry without inspection in May 2000 and periods of unlawful presence in the United States.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

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