

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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

715

DATE: NOV 06 2012

OFFICE: SAN JOSE, CA

FILE: [REDACTED]  
(RELATES: [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,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, San Jose, California, and the matter 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 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 attempting to procure a benefit provided under the Act by willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative. He 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 his U.S. lawful permanent resident spouse and parents.

In a decision dated March 16, 2011, the director determined the applicant failed to establish that his lawful permanent resident parents would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal, counsel asserts that the director failed to properly examine hardship the applicant's lawful permanent resident wife would experience if the applicant's appeal were denied. Counsel asserts further that evidence establishes the applicant's wife, mother and father would experience extreme emotional, financial and physical hardship if the applicant is denied admission into the United States. In support of these assertions counsel submits letters from the applicant's wife, mother and father; medical evidence and a psychological evaluation; employment documentation; photographs; and country-conditions reports. Counsel also submits a copy of an AAO decision.

The entire record was reviewed and considered in rendering a decision on the appeal.

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 October 21, 1991, the applicant attempted to procure a U.S. passport by presenting a counterfeit California birth certificate as proof of his U.S. citizenship. Accordingly, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure a benefit provided under the Act.<sup>1</sup> See *Matter of Barcenas-Barrera*, 25 I&N Dec. 40, 44 (BIA 2009) (finding that a U.S. passport is a benefit under immigration laws). Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

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<sup>1</sup> Aliens making false claims to U.S. citizenship on or after September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, are also inadmissible under section 212(a)(6)(C)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for which no waiver is available. Because the applicant's false claim to U.S. citizenship occurred prior to September 30, 1996, he is not inadmissible under section 212(a)(6)(C)(ii)(I) of the Act.

Section 212(i) of the Act states that:

- (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-Moralez*, 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 Board of Immigration Appeals (Board) 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 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, supra* 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (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. lawful permanent resident spouse, mother and father are his qualifying relatives under section 212(i) of the Act. Reference is made to hardship that the applicant’s daughter would experience if the applicant’s waiver application is denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant’s daughter will therefore not be considered, except as it may affect the applicant’s qualifying family members.

The applicant’s wife states in a sworn declaration that she married the applicant nearly 30 years ago when she was 17 years old, they have lived together since that time, and they have three children together. The applicant is the sole financial provider for their family, and she fears she will lose their home if the applicant is removed from the United States. She also depends on the applicant for emotional support. She fears her life would be “destroyed” without the applicant’s presence. The possibility of living separately from him causes her to lose sleep; she wakes up crying, “feel[s] sad most of the time,” and has “lost the will to live.” She also fears driving and depends on the applicant for transportation. Counsel asserts further, in a brief, that if the applicant’s wife moved to Mexico with the applicant she would lose her home, be separated from her children and family in the United States, and would lose her lawful permanent resident status in the United States.

The applicant’s mother, in her sworn declaration, states that she lives with the applicant and his wife, and he is the sole financial provider for their household. She suffers from depression and hypertension; the applicant brings her to medical appointments and buys and administers her medicine. She also worries the applicant’s life would be in danger in Michoacan, Mexico, due to the high rate of crime and violence, and she states she “could not live in peace” knowing the applicant was alone and in danger in Mexico.

The applicant's father states in a sworn declaration that he depends on the applicant financially; he and the applicant have a special relationship; the applicant has always cared for him; and the applicant schedules his doctor appointments and brings medicine to him. He feels very depressed by the possibility of being separated from the applicant, has lost his appetite, and finds it hard to get up every day. He also fears the applicant would be unable to find work in Mexico, and that he would be in danger due to crime and violence in Mexico.

A licensed psychologist notes that the applicant's wife and mother are financially dependent upon the applicant, they depend on him for transportation and language purposes, and they are "virtually dependent" on him as their "interface with the world outside" their home and church. The applicant's mother meets the diagnosis for mild generalized anxiety disorder, and the psychologist indicates her condition would escalate if the applicant were not allowed to remain in the United States. The applicant's wife has a "cultural agoraphobia" based on her failure to become bicultural in the United States; the psychologist believes she would experience symptoms of severe adjustment reaction with mixed anxiety and depressed mood, if the applicant were denied admission into the United States.

The psychologist indicates the applicant's father lives with another son's widow about an hour away from the applicant's home, and that he depends on his sons, particularly the applicant, to care for him and "organize his life." The psychologist believes the applicant's father would have a probable diagnosis of moderate to severe anxiety disorder with panic attacks if the applicant were denied admission into the United States.

Medical evidence reflects the applicant's mother suffers from dyslipidemia, hypertension, osteoporosis, and acid reflux, and that she had surgery for gallbladder inflammation. A doctor, who notes that the applicant's mother has episodes of insomnia and is on medication for depression, believes she would benefit from the applicant's company to help her go to her medical appointments. The record also contains evidence reflecting the applicant's wife has been treated for an ovarian cyst.

Employment and federal income tax evidence confirm the applicant is employed, his wife does not work, and he is the sole financial provider for his family. Country-condition reports confirm that serious crime and violence exists in Mexico and because Michoacán is home to a dangerous drug-trafficking organization, unnecessary travel to Michoacán should be deferred.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and she remained in the country. The applicant's wife was a teenager when she married the applicant, they have been married for nearly 30 years, and evidence establishes she is financially dependent upon the applicant. She feels her life would be destroyed without the applicant. Moreover, evidence confirms concerns that the applicant would face serious crime and violence issues in Michoacán, and she worries about the physical and emotional effect of the applicant's relocation on his mother and father. The cumulative evidence establishes hardship that rises above that normally experienced upon removal or inadmissibility.

The evidence, when considered in the aggregate, also establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if she relocates to Mexico. The applicant's wife has lived in the United States for most of her life, she would be separated from her children and life in the United States, and she would lose her U.S. lawful permanent resident status due to abandonment if she took up permanent residence in Mexico. (See Section 101(a)(13)(C) of the Act). Furthermore, country-conditions evidence reflects the Department of State recommends that non-essential travel to the state of Michoacán be deferred due to serious crime and violence in the region.

Because the applicant has established his wife would experience extreme hardship in the United States and in Mexico, the AAO finds it unnecessary to assess whether the applicant's mother or father would experience extreme hardship if the applicant were denied admission into the United States.

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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The unfavorable factors in this matter are the applicant's attempt to procure a U.S. passport in 1991 by presenting a counterfeit California birth certificate, and his unlawful presence in the United States from July 1999, when his B2 visitor visa expired, until July 1, 2010, when his daughter filed an adjustment of status application on his behalf. Information in the record also indicates the applicant has a petty theft conviction. The favorable factors are his extensive family ties in the United States, the hardship the applicant's wife and family would face if the applicant is denied admission into the United States and letters attesting to the applicant's good character. The AAO finds that the immigration violations committed by the applicant are very serious in nature and cannot be condoned. Taken together, however, 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

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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.