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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
*Office of Administrative Appeals*  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

[REDACTED]

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Date: **SEP 07 2012**

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: Applicant: [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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, 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 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), of the Immigration and Nationality Act (the Act), for seeking admission into the United States by fraud or willful misrepresentation. The director concluded that the applicant had failed to establish that his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the applicant did not receive a notice of intent to deny in regard to the Form I-601 and was thus not provided with an opportunity to present evidence. Counsel argues that the applicant submitted evidence of extreme hardship to his qualifying relative spouse, and the denial was wrong. As to hardship, counsel declares that the applicant's wife has a strong relationship with the applicant, to whom she has been married to for 30 years. Counsel contends that the applicant's wife has depression, anxiety, and post-traumatic stress disorder (PTSD) from fear of separation from the applicant. Counsel states that the applicant's wife survived cervical cancer, and has diabetes and a partially disabled right arm. Counsel contends that the applicant assists his wife in household duties and driving, and that their children, who are now adults, are too busy to help.

In regard to relocation to Mexico, counsel contends that the applicant's wife's health will be at risk from the unavailability of medical treatment or, if available, substandard care. Counsel asserts that if the applicant's wife's cancer returns, she will not be able to obtain adequate treatment due to substandard medical facilities or the exorbitant cost of treatment. Counsel argues that the applicant and his wife's age and health problems will make obtaining jobs in Mexico impossible. Counsel states that the applicant has lived in the United States for 25 years, that his mother is a U.S. citizen, his father is a lawful permanent resident, his two sisters are lawful permanent residents, and his children and grandchildren are U.S. citizens; and that the applicant has no family members in Mexico.

We will first address the director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act for seeking admission into the United States by fraud or willful misrepresentation.

USCIS records reflect that the applicant was at the International Boundary Fence, and was asked by a U.S. border patrol agent to produce identification. The applicant produced an application for a California Identification Card and claimed that he was born in Burvan, California, and was a U.S. citizen. The applicant later admitted to having been born in Mexico and being a citizen of that country.

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 chapter is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 upon showing that the bar to admission imposes an extreme hardship on a qualifying relative, which is the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the instant case, the applicant's lawful permanent resident spouse, U.S. citizen mother, and lawful permanent resident father are the qualifying relatives. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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.

In rendering this decision, the AAO will consider all of the evidence in the record.

The asserted hardship to the applicant’s wife in remaining in the United States while her husband relocates to Mexico is emotional and financial in nature. Counsel’s contention that the applicant and his wife have a close relationship is consistent with the declaration by the applicant’s wife dated [REDACTED], 2008 in which she asserted having been emotionally supported by her husband when their young son died and during her cancer treatment in 1995. She stated that the applicant has been a good husband and father and during their 30 years together. The applicant’s wife asserted that her husband injured his arm in an accident and has not been able to work since. She declared that she constantly worries about her husband returning to Mexico for crime there is prevalent, her husband would be alone, she would not have finances in which to visit him, and his age and long residence in the United States would make it difficult for him to obtain a job. The submitted evaluation by Dr. [REDACTED] is in accord with the contention of emotional hardship as Dr. [REDACTED] stated that the applicant’s wife has symptoms of PTSD caused by the death of her six-year-old child and by the applicant’s precarious immigration status. Dr. [REDACTED] diagnosed the applicant’s wife with PTSD, major depressive disorder, and generalized anxiety, and stated that the applicant and his wife were recently prescribed psychotropic medication. Medical records are in agreement with the claim that the applicant’s wife was treated for cervical cancer in 1995. The comprehensive orthopedic medical re-evaluation dated [REDACTED], 2006 from Dr. [REDACTED], an orthopedic surgeon, is consistent with the assertion that the applicant

had injured his arm falling from a ladder while at work, and injured his knee and neck in a motor vehicle collision. The re-evaluation from Dr. [REDACTED] dated [REDACTED] 2008, in which it is stated that the applicant injured his knee at work, and required surgery and was unable to return to work due to permanent disability, is in accord with the claim that the applicant will have difficulty obtaining a job in Mexico. As of the date of the appeal the applicant was unable to work. When the asserted hardship factors are considered together, they do demonstrate that the emotional hardship to the applicant's wife, in remaining in the United States while her husband relocates to Mexico, is more than the common result of inadmissibility.

As to relocation to Mexico with the applicant, counsel argues that the health problems and age of the applicant and his wife will make it impossible to obtain jobs in Mexico. Dr. [REDACTED] stated in the evaluation that the applicant's wife asserted that she and her husband are not used to living in Mexico, and will not know how to earn a living there, and due to their age and health problems will probably not survive long. In the undated declaration the applicant claimed that he was disabled and his wife underwent an operation on her right arm. Submitted documents reflect that in 1997 the applicant's wife was an assembly worker and underwent surgery for an occupational injury to her right wrist and elbow. Medical records indicate that the applicant's wife was diagnosed with diabetes in 2008. The applicant and his wife contend that they have no family or social ties to Mexico. The record conveys that the applicant and his wife are [REDACTED] and [REDACTED] years old, respectively; that the applicant has lived in the United States since 1983 and his mother lives here legally. In light of their health problems, long residence in the United States, and lack of ties to Mexico, we believe it is unlikely the applicant, who was permanently disabled as of the date of the appeal, and the applicant's wife, who the record shows lacks education and skills, and has held only menial, low-paying jobs, will be able to obtain a job that will pay a wage which will allow them to survive in Mexico. Thus, when the hardship factors are considered together, they demonstrate that the hardship that the applicant's wife will experience in Mexico is extreme and more than the common result of inadmissibility.

Based upon the record before the AAO, the applicant in this case establishes extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) 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).

*Id.* at 301.

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 adverse factors in the present case are the applicant’s misrepresentation; illegal entries and removal from the United States; unlawful presence; unlawful employment; and convictions for driving under the influence, hit and run/property damage, and illegal entry. The favorable factors in the present case are the positive references regarding the applicant’s character by his wife and daughter; the applicant’s ownership of real estate and successful completion of a first offender program in 2000; and the passage of 12 years since the applicant’s most recent conviction. The AAO finds that the applicant’s immigration violations and crimes are a serious violation of the law, nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

**ORDER:** The appeal is sustained.