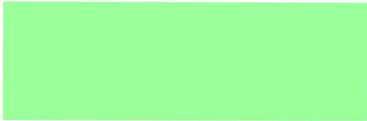


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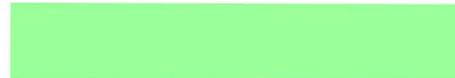
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Avenue, N.W. MS 2090  
Washington, DC 20529-2090



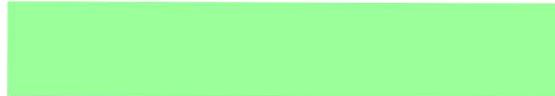
U.S. Citizenship  
and Immigration  
Services



DATE: **APR 02 2013** OFFICE: LOS ANGELES



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, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting 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, Los Angeles, California, and the appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the underlying application is approved.

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 admission into the United States by willfully misrepresenting a material fact. The applicant's mother is a U.S. lawful permanent resident, and the applicant is married to a U.S. citizen. She is the beneficiary of an approved Form I-130, Petition for Alien Relative, and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse and family.

In a decision dated June 15, 2009, the director determined the applicant had failed to establish that a qualifying relative would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly. In a decision dated May 29, 2012, the AAO agreed that the applicant had failed to demonstrate extreme hardship to a qualifying relative, either in the United States or in Mexico. The appeal was dismissed accordingly.

In her motion to reopen and reconsider, counsel asserts that the AAO erred in not assessing the combined hardship of the applicant's husband and mother in its extreme hardship assessment. Counsel asserts further that the evidence establishes cumulatively that the applicant's U.S. citizen husband and lawful permanent resident mother will experience extreme emotional, physical and financial hardship if the applicant is denied admission into the United States. Counsel submits new evidence in support of these assertions, including affidavits from the applicant's spouse and her mother, financial and employment information, medical documentation, birth certificates for their children, and photographs.

The record also contains a psychological evaluation for the applicant's spouse, school records for the applicant's husband, and immigration and citizenship information for family members. The entire record was reviewed and considered in rendering a decision on the motion.

The regulations state in pertinent part at 8 C.F.R. § 103.5(a):

(a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

Counsel asserts on motion that the AAO erred in not assessing the combined hardship of the applicant's husband and mother in the May 29, 2012 AAO decision; however, counsel refers to no precedent decisions or Service policy to support her assertions that adjudicators must consider extreme hardship to more than one qualifying relative "collectively." The AAO notes that the extreme-hardship standard involves an examination of whether the cumulative evidence establishes extreme hardship to each individual qualifying family member. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996) (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.) The motion to reconsider the AAO decision shall therefore be dismissed.

Counsel has, however, met the requirements for a motion to reopen, in that she has presented new facts to be considered in a reopened proceeding, and the facts are supported by documentary evidence. The motion to reopen the May 29, 2012, AAO decision is therefore granted.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary Department of Homeland Security, "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.

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 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*, 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).

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 its May 29, 2012, decision the AAO found that the evidence contained in the record, when considered in the aggregate, failed to establish that either the applicant's husband or mother would experience extreme financial, emotional or physical hardship in the United States or in Mexico, if the applicant's waiver application were denied. The decision noted that the record lacked evidence to establish the family's living expenses, the applicant's husband's employment status,

and their home ownership. The evidence also failed to establish the severity of the applicant's husband's medical conditions; that he requires the applicant's assistance with his medical needs; that he would experience emotional hardship beyond that normally experienced upon removal or inadmissibility; or that he would be unable to find work, or would experience financial hardship or safety concerns if he relocated to Mexico. The decision noted further that the evidence in the record failed to establish the applicant's mother is dependent upon the applicant, that her health conditions would be affected if the applicant moved to Mexico, or that her mother would face danger or other hardship if she moved with the applicant to Mexico.

On motion, the applicant's husband states that he recently lost his job due to stress relating to the applicant's possible deportation, the family also lost their home, he does not receive unemployment benefits, and the family is now dependent on the applicant's salary as a worker at a fast-food restaurant. Both he and the applicant have job prospects in another city, but they do not want to move or begin new jobs due to the uncertainty of their situation. His depression and diabetes are worsening, his vision is becoming more blurry, and he is losing sensation in his feet. He still needs knee and eye surgery; however, he would be unable to afford the procedures in Mexico, and would need the applicant to care for him if he obtained the surgery in the United States. In addition, he would find it difficult to care for their five children on his own in the United States, while also looking for a job and trying to manage his health issues. It also would be difficult to find work in Mexico due to his age, physical condition, illnesses, and lack of specialized skills, and he would be unable to support a family of six on a Mexican salary.

Evidence submitted with the motion confirms the applicant's husband entered into a March 2012 agreement with his bank to sell their home in a short sale. The record also contains evidence that the applicant filed a change of address form with this agency in June 2012. Unemployment insurance evidence demonstrates the applicant applied for an extension of California unemployment benefits in April 2012.

New medical evidence reflects the applicant's husband has symptomatic pterygium and that he would benefit from eye surgery. Previously submitted medical evidence reflects the applicant's husband also suffers from uncontrolled diabetes, hypothyroidism, gout, anxiety, vitiligo, and obesity, and that he experiences dizziness, fatigue, blurry vision, lower extremity edema, difficulty sleeping, leg pain, and nervousness. A doctor indicates the applicant's husband's health has suffered due to the applicant's possible deportation, that he has become non-compliant in taking his medication, and that he would benefit from the applicant's continued emotional and physical support. A previously submitted psychological assessment indicates the applicant's husband has a dependent personality and tendencies towards depression, and that he needs the applicant's care, attention, and assistance to focus on taking his medications and engage in good eating and lifestyle habits.

The applicant's mother states in an affidavit submitted on motion that she lives with the applicant and their family, and she cannot live with her other children because they do not have enough space in their homes. The applicant takes care of her, helps with her medications and her depression, and also helps with some of her living expenses. She does not want to be separated

from her family in the United States, and she would lose her U.S. lawful permanent resident status if she moved to Mexico with the applicant.

Medical evidence reflects the applicant's mother suffers from diabetes, hypertension, obstructive pulmonary disease, generalized anxiety disorder and major depression. She requires medication, a special diet and daily exercise, and she "is in increasing need of custodial care and medical supervision for her medication regimen." Previously submitted medical evidence reflects the applicant's mother also suffers from glaucoma, and that she would benefit from the applicant's continued emotional and physical support.

The AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's husband would suffer emotional, physical and financial hardship beyond that normally experienced upon removal or inadmissibility if the applicant were denied admission and he remained in the United States. Cumulative evidence reflects the applicant's husband has become unemployed and has lost his home due to financial difficulties associated with the applicant's immigration situation, and that he would experience financial hardship if he remained with their five children in the United States, or if the applicant and children moved to Mexico and he needed to help support two households. Evidence also establishes the applicant's husband would suffer physical and emotional hardship if he were separated from the applicant and possibly their children. The applicant's husband suffers from several medical conditions that have been aggravated by their family's immigration circumstances, he has tendencies towards depression, and he benefits physically and emotionally from applicant's continued support. The factors, when considered in the aggregate, establish that the hardship the applicant's husband would suffer if he remains in the United States go beyond the common results of removal or inadmissibility, and rise to the level of extreme hardship.

The cumulative evidence also establishes the applicant's husband would experience hardship beyond that normally experienced upon removal or inadmissibility if he relocates to Mexico with their family. The applicant's husband has several on-going health conditions that require monitoring, and eye surgery is recommended. Although a U.S. Department of State report reflects that adequate medical care is available in major cities in Mexico, the report also reflects that hospitals do not accept U.S. health insurance, and that hospitals require payment "up front." See [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_970.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_970.html). The applicant's husband has applied for unemployment benefits and the family has lost their home in the United States, and it is reasonable to conclude they would have few financial resources upon moving to Mexico. Evidence also reflects that the applicant's husband has a tendency towards becoming depressed, and the record establishes he would leave his long-time home in the United States, would be separated from family members whom he is close to, and would experience additional emotional hardship based on their U.S. citizen children's separation from home and life in the United States. The cumulative evidence establishes the applicant's husband would experience extreme hardship if he relocated to Mexico with the applicant.

Because the applicant has established that the bar to her admission would result in extreme hardship to her husband, the AAO finds it is unnecessary to determine whether the applicant's mother would experience extreme hardship if the applicant's waiver application were denied. The

AAO thus turns to consideration of whether 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 . . . 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 unfavorable factors in this matter are the applicant's attempt to procure admission into the United States in August 1996 by using a passport that belonged to another individual, her illegal entry into the United States in September 1996, and her lengthy unlawful presence in the United States from September 1996 until March 7, 2007, when she filed her adjustment of status application.

The favorable factors are the applicant's U.S. citizen husband and children, the hardship the applicant's husband and family would face if the applicant were denied admission into the United States, letters attesting to the applicant's good character, and the applicant's lack of a criminal record. The AAO finds that the immigration violations committed by the applicant are 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 a qualifying family member 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

(b)(6)

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has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(i) of the Act.

**ORDER:** The motion is granted and the underlying waiver application approved.