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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: APR 04 2013

Office: SALT LAKE CITY FILE: [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 black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Salt Lake City, Utah. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision withdrawn and the waiver application approved.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 attempting to enter the United States on January 6, 1996 using a fraudulent lawful permanent resident stamp in his passport. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his family.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 4, 2008. Thereafter, the applicant moved to reopen and reconsider his waiver application and also filed an Application for Permission to Reapply for Admission in to the United States after Deportation or Removal (Form I-212). The denial of his waiver application was affirmed and the Form I-212 was denied. *See Decision of the Field Office Director*, dated June 2, 2009.

On appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated November 9, 2011.

Counsel on motion asserts that the qualifying spouse has experienced changed circumstances since the applicant's appeal was submitted and that new facts in the case support finding she would experience extreme hardship in the United States without the applicant.

The record contains the following documentation: an Application for Waiver of Grounds of Inadmissibility (Form I-601); Notices of Appeal or Motion (Forms I-290B)¹; relationship and identification documents for the applicant and qualifying spouse; briefs from the applicant's attorney; affidavits and letters from the applicant, qualifying spouse, friends, family and their employers; financial documentation; case law; copies of health insurance cards; articles about herniated discs and children raised without their fathers; an approved Petition for Alien Relative (Form I-130); and the Application to Register Permanent Residence or Adjust Status (Form I-485) with supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The applicant's attorney indicates that the qualifying

¹ Counsel notes on the Form I-290B submitted with this motion that the motion to reopen concerns both Form I-601 and Form I-212. The record does not show proper filing of two separate motions for each application, however, in accordance with requirements listed under 8 C.F.R. § 103.5(a)(1)(iii)(B). The motion therefore will be considered a motion to reopen Form I-601.

spouse has lost her long-term employment, that her emotional state is worsening and that she is experiencing additional medical hardship. New evidence was provided to support these claims including proof of the qualifying spouse's layoff, her receipt of unemployment benefits, their involvement in bankruptcy proceedings and their current income. On motion, the applicant's attorney also provides additional support for the qualifying spouse's worsening emotional and medical hardships. As such, the AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

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 Act is inadmissible.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's wife is the only qualifying relative in this case. 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-Moralez*, 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 AAO, in its decision dated November 9, 2011, concluded that the applicant's U.S. citizen spouse would face extreme hardship if she were to relocate to Mexico with the applicant, based on her close family and community ties to the United States, her lack of ties to Mexico, her inability

to speak Spanish, her financial responsibilities in the United States and the fact that she has lived in the United States her entire life.

However, the AAO also found that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated to Mexico due to his inadmissibility.

On motion, the applicant's attorney claims that the qualifying spouse has experienced changed circumstances since the applicant's appeal was submitted and that new facts in the case support finding she would experience extreme hardship in the United States without the applicant. The applicant's attorney indicates that the qualifying spouse has lost her long-term employment and relies upon the applicant's income to pay her expenses, especially their mortgage. Proof of the qualifying spouse's layoff, her receipt of unemployment benefits, their bankruptcy proceedings, and correspondence with tax agencies to resolve their payment problems was provided to supplement the record. In addition, the applicant's attorney submits evidence of the applicant's current employment and income.

The new evidence demonstrates that the applicant's spouse has significant financial problems and relies upon the applicant's income. In addition, supplemental letters from the qualifying spouse, her mother, her sister and friends further demonstrate the emotional hardships that she would suffer upon separation from the applicant and as a single parent, given her childhood experiences. The record also reflects that the qualifying spouse's depression and other emotional issues have worsened as a result of her witnessing her son experience the sadness regarding the possible loss of his father. The letters also indicate that the applicant's spouse is suffering from a herniated disc, which may require surgery and makes her physically reliant on the applicant. The new evidence provided regarding the qualifying spouse's financial hardship, coupled with her emotional and medical hardships and struggles as a single mother, sufficiently demonstrate that the qualifying spouse will experience extreme hardship in the United States without 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.

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 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 this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, his good moral character, as indicated in letters of support from family and friends, his length of stay in the United States and his lack of a criminal record. The unfavorable factors include the applicant's misrepresentation in his attempt to enter the United States, his removal order and his re-entry and residence in the United States without legal status.

Although the applicant's immigration violations are serious and cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore 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 his burden and the appeal will be sustained.

The AAO notes that the applicant still requires approval of his Form I-212, because he previously was ordered removed. The Field Office Director should reconsider his decision denying the applicant's Form I-212, given the approval of the applicant's Form I-601 waiver application and the fact that the applicant is no longer inadmissible under section 212(i) of the Act.

ORDER: The motion will be granted, the previous decision withdrawn and the waiver application approved.