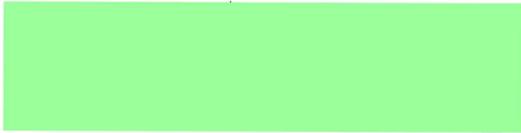


(b)(6)

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**

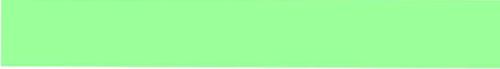


Date: **APR 04 2013**

Office: COLUMBUS, OH

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted and the underlying waiver application will be granted.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. The AAO dismissed the appeal and a subsequent motion, finding that although the applicant established that her husband would suffer extreme hardship if he remained in the United States, the applicant did not establish that her husband would suffer extreme hardship if he relocated to Mexico with her.

The applicant filed a second motion to reopen and reconsider contending that new, previously unavailable evidence warrants reopening and reconsidering the case. Counsel contends that crime in Queretaro, Mexico, has dramatically worsened and that the applicant's husband would be unable to find a job in Mexico, particularly considering blatant age discrimination in Mexico. The motion includes a new affidavit from the applicant's husband, numerous articles addressing country conditions in Mexico, financial documents, and documentation from the couple's children's schools.

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. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen and reconsider. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's previous decisions, the record also contains, *inter alia*: an affidavit from the applicant's husband, Mr. [REDACTED] numerous articles addressing conditions in Mexico; documents from the couple's children's schools; copies of bills; and a copy of the couple's 2011 tax return. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that the applicant presented a Form I-551, Permanent Resident Card, belonging to another person in an attempt to enter the United States, and pled guilty to violating 8 U.S.C. § 1325, Unlawful Entry, before a U.S. magistrate. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

After a careful review of the entire record, the AAO finds that the applicant’s husband, [REDACTED], will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that if [REDACTED] decided to remain in the United States without his wife, he would suffer extreme hardship. The AAO will not disturb that finding. That AAO also finds that if [REDACTED] returns to Mexico to avoid the hardship of separation from his wife, he would suffer extreme hardship. The record shows that [REDACTED] is currently forty-five years old and has a license as an “Apprentice Electrician.” The applicant has submitted documentation addressing blatant and rampant age discrimination in Mexico as well as specific evidence that electricians struggle to find employment in Mexico. Moreover, the applicant has submitted numerous articles specifically addressing crime in Queretaro, where the applicant and [REDACTED] were both born. According to the articles submitted on motion, Queretaro has recently been found to be involved in the production of methamphetamines and ecstasy, was reported to marginalize five deaths that occurred in a two-week period, and has had an increase in organized criminal activity and unexplained disappearances. Although the U.S. Department of State’s Travel Warning explicitly states that there is no advisory in effect for Queretaro, *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012, at the same time, the AAO acknowledges that the articles the applicant has submitted on motion show that [REDACTED] concern about safety should he relocate to Queretaro with his family is not without basis. In addition, the AAO recognizes that [REDACTED] has lived in the

United States for over twenty-three years, almost his entire adult life, since 1989. The AAO also acknowledges that [REDACTED] has five U.S. citizen children, all of whom are in school full-time in the United States. The record contains evidence that the couple's two oldest sons have received grants to attend college in Texas at no cost and, according to [REDACTED], they continue to live at home because they cannot afford to live on their own. Relocating to Mexico to be with his wife would therefore mean not providing shelter to his sons while they are in college as well as moving the couple's three younger children. Considering the unique factors of this case cumulatively, the AAO finds that the hardship [REDACTED] would experience if he returned to Mexico to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and her 1993 conviction for the same, the applicant's unlawful entry into the United States without inspection, and the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her lawful permanent resident husband and five U.S. citizen children; the hardship to the applicant's entire family if she were refused admission; and the applicant's lack of any arrests or criminal convictions for the past twenty years.

The AAO finds that, although the applicant's immigration violations and conviction are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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