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

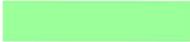


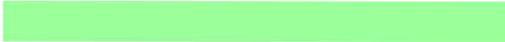
U.S. Citizenship
and Immigration
Services



DATE: **AUG 21 2013**

OFFICE: ST. PAUL, MINNESOTA

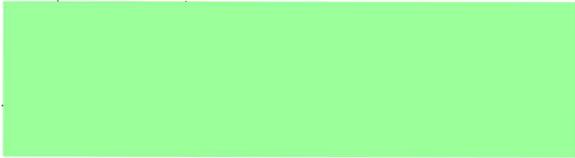
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IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i)
and of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the 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 obtaining an immigration benefit through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 her U.S. citizen spouse.¹

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated January 3, 2013.

On appeal, counsel presents new evidence and asserts that the director's decision did not properly weigh the factors of extreme hardship in the aggregate. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed January 30, 2013, and *counsel's brief*.

The record contains, but is not limited to: counsel's briefs; various immigration forms; the applicant's spouse's statement; reports by the applicant's spouse's psychologists, physician, chiropractor, and college; financial documents; employment documents; birth, marriage and naturalization certificates; passport and identity documents; and country-condition reports. 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 when the applicant applied for a visitor visa to the United States in February 2010, she indicated that her marital status was "legally separated" and that she did not have relatives in the United States although she was married and her husband lived in the United States at that time. This misrepresentation is considered material as it shut off a line of inquiry which would have been relevant to the applicant's eligibility for the benefit sought. *Matter of S- and B-C-*, 9 I&N Dec. 436,

¹ The AAO notes that the applicant filed a new Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), on May 15, 2013, after filing the present appeal, which indicates that the applicant is subject to a three-year or ten-year bar to admissibility for unlawful presence in addition to the inadmissibility for misrepresentation previously found. The Field Office has yet to adjudicate this waiver application. The AAO finds no evidence in the current record to support a finding of unlawful presence. This will need to be examined in future proceedings. The current AAO decision will address only the Form I-601 filed to waive inadmissibility under section 212(a)(6)(C) for misrepresentation.

448-449 (BIA 1960; AG 1961). The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest the inadmissibility.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or her daughters can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only qualifying relative. 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-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*, 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 U.S. 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 v. I.N.S.*, 138 F.3d 1292 (9th 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 record contains references to hardship the applicant’s daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s spouse is a 46 year-old native of Mexico and citizen of the United States. He became a lawful permanent resident of the United States in 1984 and a U.S. citizen in 2011. He states that he traveled to Mexico to visit his spouse and daughters after he moved to the United States, but living apart from them for a number of years has caused him depression. He states, and a letter from his therapist in Mexico confirms, that he received treatment for depression in Mexico from 2001 to 2009. The applicant’s spouse explains that in 2010 he had a breakdown when he realized he had missed so many critical moments of his spouse and daughters’ lives. A psychologist in the United States diagnosed him with adjustment disorder with mixed anxiety and depressed mood and reports that he shows symptoms such as isolation, loss of appetite, low energy, lack of interest in previously enjoyable activities, and spontaneous aggression. His psychologist and chiropractor also note that his stress and anxiety have led to chronic musculoskeletal fatigue and severe back pain which impairs his

physical ability to function. A letter from a doctor shows that the applicant has sought medical treatment for his back pain and depression. The psychologist indicates that his back pain is tied to his emotional well-being as it improved greatly when his wife and children came to the United States in 2011. After receiving the decision of the applicant's waiver application, his depression and pain worsened. He states that he has fallen into a deep depression, is experiencing extreme stress and has frequent migraines. The psychologist states that his worries about his spouse and daughters' health and safety compromise his mental and physical health. The applicant's spouse worries that his wife who is at high risk of breast cancer would not receive the same high level of medical treatment she has had in the United States with the applicant's spouse's health insurance. He also worries that criminals will target and harm his wife and daughters in Mexico because they perceive those who return from living in the United States to have wealth. The psychologist states that such worries have kept the applicant from sleeping and from concentrating on his normal activities, which has led to increased levels of physical pain and a depressive state.

The applicant's spouse states he is financially dependent on his wife. The applicant's spouse's statements and financial documents show that the applicant's spouse is the primary income provider, and the applicant provides approximately one-seventh of the income to their household. The applicant's spouse explains that his debt is over \$75,000, which financial documents corroborate, and he requires his spouse's assistance to pay their monthly expenses as well as this debt. Their younger daughter is also financially dependent on them, and the applicant's spouse states that without the applicant, he would have difficulty meeting their daughter's needs. A community and technical college as also admitted him and his daughters, and he states that without the applicant's financial support he would not be able to pursue high education that would increase his chances of gaining employment with compensation greater than the minimum wage.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including his mental, emotional and physical health, and his financial responsibilities and limitations without the applicant. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse states that he cannot relocate to Mexico because of the debt he has incurred in the United States, his inability to pursue higher education, the minimum employment opportunities in Mexico given his age, and the violence in general in Mexico and specifically where his spouse lived in Saltillo, Coahuila. Country-condition reports as well as the most recent U.S. Department of State Travel Warning for Mexico dated July 12, 2013 indicate an numerous kidnappings and murders by translational criminal organizations and drug cartels and warn against non-essential travel for U.S. citizens specifically to Saltillo, Coahuila because of the increase in violent crimes in the last six months.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his length of residence in the United States, his age, his health concerns, his financial obligations in the United States, his loss of employment and educational opportunities, and stated safety-related concerns in Mexico. Considered in the aggregate, the AAO finds that the

evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Mexico to be with 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-Morales*, 21 I&N Dec. at 301. 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 her 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-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board 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 Board 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 section 212(i) relief must bring forward to establish that she 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 applicant's U.S. citizen spouse, the extreme hardship he would face if the applicant is not granted this waiver, whether he accompanied her or remained in the United States, her lack of a criminal record, and her medical condition. The unfavorable factor in this matter is the applicant's misrepresentation of her marital status and the location of her husband in the United States on her visitor visa application from 2010. Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

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NON-PRECEDENT DECISION

Page 7

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 her burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.