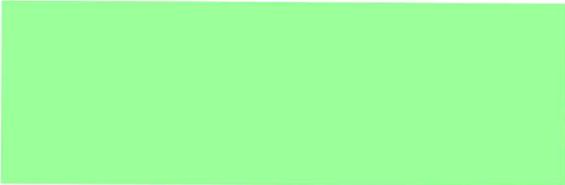




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

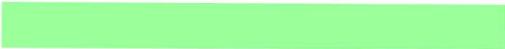


DATE: **AUG 30 2013**

OFFICE: ANAHEIM, CA

FILE: 

IN RE:

APPLICANT: 

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:

SELF-REPRESENTED

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, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Mexico City, Mexico, 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), for having attempted to procure admission to the United States as a nonimmigrant through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 19, 2012.

On appeal, submitted by the applicant on December 21, 2012 and received by the AAO on April 11, 2013, the applicant submits letters from family and friends, copies of medical records, and statements from the applicant and his spouse. In his statement, the applicant contends his spouse suffers from medical, emotional, and financial difficulties without him present. He additionally asserts she exposes herself to dangerous country conditions when she travels to Mexico to visit him.

The record includes, but is not limited to, the documents listed above, additional statements from the applicant, his spouse, as well as family and friends, evidence of birth, marriage, residence, and citizenship, medical records, articles on country conditions in Mexico, copies of photographs and greeting cards, and other applications and petitions. 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:

- (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:

- (1) The [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.

In the present case, the record reflects that the applicant presented his DSP-150, border crossing card, to immigration officials on September 30, 2009. The applicant initially stated he was travelling to [REDACTED] with his spouse. After further questioning, the applicant admitted in a sworn statement that, after he was previously admitted pursuant to a border crossing card, he immediately began living and working in the United States for a year and a half, with the knowledge that a Border Crossing Card does not permit employment in the United States. *Sworn statement*, September 30, 2009. The applicant additionally stated he was going back home to [REDACTED]. *Id.* Inadmissibility is not contested on appeal. The AAO consequently finds the applicant presented himself as a nonimmigrant, when his actual intention was to continue permanently residing and working in the United States, and that he had also misrepresented his immigrant intent upon his previous admission to the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured and for subsequently attempting to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

Section 212(i) of the Act provides that 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 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 applicant’s spouse contends she will experience medical, financial, and emotional hardship in the event of continued separation from the applicant. She states she works 35 hours a week as a [REDACTED], earning \$9.50 an hour. The spouse claims she cannot meet her financial obligations on that income, and she has had difficulty living in one place due to her inability to afford rent. Family members and friends indicate the spouse has struggled financially, and that she makes a low income at her part-time job. The applicant asserts he would be able to assist her financially if he resided in the United States. The spouse moreover states she has juvenile-onset diabetes, and has lost sight in one eye, which has been replaced with a prosthetic eye. She explains she has muscle weakness due to the diabetes, and worries that she will have no one to take care of her if the applicant is not allowed to return to the United States. The spouse adds in addition to the 35 hours a week she works, she also takes care of her father. Medical records are submitted in support. The spouse also claims she loves the applicant, and needs him with her to fulfill her emotional needs.

The spouse asserts she will experience family and safety related, medical, and financial hardship upon relocation to Mexico. She contends she worries about living in Mexico given the crime and violence there. Articles on country conditions in Mexico are submitted in support. The spouse additionally states relocating to Mexico would entail separation from her adult children as well as the rest of her family, which would cause her emotional difficulties. The spouse further explains that she has never lived in Mexico, was born in the United States, and has no ties to Mexico apart from the applicant.

The applicant has submitted sufficient evidence of his spouse's financial difficulties. In addition to her assertions and the statements made by her family and friends on this matter, medical records indicate the spouse qualified for the medically indigent services program (MISP), which requires income of less than 200% of the poverty level. The spouse has thus demonstrated to a state agency that she has an insufficient income, and that she requires assistance paying for her medical care. Furthermore, the record contains documentation that the spouse has significant medical conditions, including her retinal detachment. Although there is no letter from a medical services provider describing the severity of her medical conditions, or the degree of assistance needed from the applicant, the record contains letters from her friends and family corroborating the difficulties the spouse has given her eye and other issues. She has moreover indicated that her financial and medical hardship is compounded by her responsibilities in taking care of her father.

The AAO therefore finds there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological / emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without his spouse.

The applicant has also demonstrated his spouse would experience extreme hardship upon relocation to Mexico. The record reflects that, although the spouse has visited the applicant in Mexico, she is not a native of Mexico, and has no other ties to that country apart from the applicant. Moreover, in contrast the applicant has demonstrated his spouse has family ties to the United States, including three children, and that she has lived in the United States her entire life. Furthermore, the applicant's assertions on safety concerns in [REDACTED] where the applicant resides, are supported by the U.S. Department of State's current travel warning, which indicates:

You should exercise caution in the northern state of [REDACTED] particularly at night... [REDACTED] murder rate has climbed from 14.3 per 100,000 in 2011 to 15.8 per 100,000 in 2012. In the majority of these cases, the killings appeared to be targeted TCO assassinations. Turf battles between criminal groups resulted in some assassinations in areas of [REDACTED] and [REDACTED] frequented by U.S.

citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours.

*Travel warning:* [REDACTED] *U.S. Department of State*, July 12, 2013. In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, family-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to [REDACTED]

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

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 this case, the negative factors include the applicant's misrepresentations, his employment without authorization in the United States, and his unlawful status in the United States. The positive factors include the extreme hardship to the applicant's U.S. citizen spouse, some evidence of hardship to the applicant, and evidence of the applicant's good moral character as stated in letters from family and friends.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.