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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: DEC 06 2013

Office: WASHINGTON, DC

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

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 Field Office Director, Washington, D.C., denied the waiver application and the matter 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 pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and did not merit a favorable exercise of discretion. The field office director denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering he is now the only income earner for their family, the couple's son recently had an ear operation, and the applicant's wife has never lived in Mexico.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on March 31, 2006; a copy of the birth certificate of the couple's U.S. citizen son; a sworn statement from the applicant; a letter from the couple's pastor; a letter from Ms. [REDACTED] mother; a letter from the applicant's employer; copies of tax returns and other financial documents; copies of medical records; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) *In general.* - Any alien (other than an alien lawfully admitted for permanent residence) who -

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) *Waiver*. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 the applicant concedes, that he first entered the United States unlawfully in 2001 and remained until his departure in 2009. The record also shows that the applicant reentered the United States in 2010 using a tourist visa, contending he was visiting the United States when, in fact, he was resuming residence in the United States with his wife and child. Therefore, the applicant is inadmissible under and section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Counsel does not contest the applicant's inadmissibility on appeal.

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.

In this case, the applicant's wife, Ms. [REDACTED] contends she is from El Salvador and is now a U.S. citizen after her parents brought her and her brother to the United States. She states that she and her

husband have a son together and that she would be unable to support her son and herself without her husband's financial help. According to Ms. [REDACTED] she lost her job in September 2011 and has spent all of her savings on her husband's immigration case. She contends she owes \$9,500 in student loans and that her family is unable to help her financially. Furthermore, Ms. [REDACTED] states she has no friends or family in Mexico and would be separated from her family and her church. In addition, she fears being unable to afford quality health care for their son in Mexico and contends it is very dangerous to live in Mexico.

The record establishes that if Ms. [REDACTED] decides to remain in the United States without her husband, she would suffer extreme hardship. The record shows that the applicant is the main income earner for their family. According to a copy of the couple's 2011 tax return, the applicant owns [REDACTED]. Although gross receipts or sales for the business were \$164,364, after expenses, the couple's combined total adjusted gross income was \$26,152. The record further contains documentation corroborating Ms. [REDACTED] contention that she was laid off from her job at the [REDACTED]. A letter from her employer and copies of her W-2 statements show that she had been working full-time and earning \$17,754 annually, but earned only \$13,728 in 2011 after losing her job. In addition, the record contains documentation corroborating Ms. [REDACTED] contention that she owes \$9,295 in federal subsidized and unsubsidized loans, and a copy of her bill from Chase shows her account is past due. Furthermore, the record contains documentation showing the couple's son has suffered numerous ear infections, resulting in surgery in September 2007. Copies of medical records indicate he continues to have regular follow-up appointments with his physician. The record therefore establishes the hardship Ms. [REDACTED] would experience as a single parent with no income and child who continues to require follow-up medical appointments after surgery. Considering the unique circumstances of this case cumulatively, the record establishes that the hardship the applicant's wife would experience if she remains in the United States and is separated from her husband is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Moreover, the record establishes that if Ms. [REDACTED] relocated to Mexico to be with her husband, she would experience extreme hardship. The record shows that Ms. [REDACTED] was born in El Salvador. According to her Biographic Information form (Form G-325A), she has lived in the United States her entire adult life and both of her parents reside close to her in Virginia. The Form G-325A further shows that Ms. [REDACTED] has never lived in Mexico. In addition, the U.S. Department of State acknowledges that although adequate medical care can be found in major cities in Mexico, standards of medical training, patient care, business practices, and the availability of emergency responders vary greatly and may be below U.S. standards. *U.S. Department of State, Country Specific Information, Mexico*, dated October 16, 2013. The record therefore corroborates Ms. [REDACTED] contention that she may be unable to obtain adequate medical care for her son who, the record shows, has obtained medical care from the same physician since he was an infant. Considering all of these factors cumulatively, the record establishes that the hardship Ms. [REDACTED] would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The applicant also 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, his unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife and son; the extreme hardship to the applicant's family if he were refused admission; a letter from the couple's pastor describing the applicant as a person of integrity; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations 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.

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.