



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

(b)(6)

[Redacted]

DATE: **DEC 18 2013** OFFICE: SAN FRANCISCO, CA

[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 (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, San Francisco, California, 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 has resided in the United States since February 1999, when she entered without inspection. She 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 procured a visa to the United States through fraud or misrepresentation, and for having been found with altered birth certificates. The applicant is the daughter of a U.S. permanent resident and is the beneficiary of an approved Petition for Alien Relative filed by her son. 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 her U.S. citizen son and lawful permanent resident mother.

The Field Office Director concluded that the applicant failed to establish her qualifying relative would experience extreme hardship given her inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated April 10, 2013. The Field Office Director additionally found the applicant did not merit a favorable exercise of discretion. *Id.*

On appeal, counsel submits a brief in support, previously submitted evidence, the applicant's statement, a birth certificate, and copies of immigration applications. In the brief, counsel contests the Field Office Director's finding of inadmissibility. Counsel additionally asserts that even if the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, she has demonstrated that her lawful permanent resident mother would experience extreme hardship given her inadmissibility.

The record includes, but is not limited to, the documents listed above, statements from the applicant and her mother, evidence of birth, residence, and citizenship, medical and financial records, statements from the applicant's friends and family, other applications and petitions, and photographs. 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.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The Field Office Director found the applicant had committed fraud or willful misrepresentation of a material fact by failing to indicate on a 1994 non-immigrant visa application that she had U.S. citizen children who were in the United States. The applicant admits she had two children living in the United States, but indicates at the time she applied for a visa, they were undocumented. The applicant explains she omitted any mention of those two children because she was afraid that such a disclosure would put them at risk, given their lack of status. The applicant adds she disclosed the fact that her brother lived in the United States, and that she had five children living in Mexico. Counsel asserts that the applicant's failure to mention her two undocumented children was immaterial, as it was not predictably capable of affecting the visa decision.

USCIS records reflect that the two children, [REDACTED] were approximately 10 and 19 years of age in 1994. Moreover, records indicate that at the time, neither of them had any immigration status, nor did they have immigration applications pending. The two children became lawful permanent residents in 2003 and 2004, 10 years after the applicant applied for her nonimmigrant visa in 1994, and they naturalized in 2011 and 2009. As such, although the children are currently U.S. citizens, the Field Office Director erred by finding the applicant failed to disclose that she had U.S. citizen children residing in the United States in 1994.<sup>1</sup>

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<sup>1</sup> The Field Office Director also stated that the applicant failed to disclose the fact that she had two children in the United States who were seeking permanent residence or citizenship. As stated above, USCIS records do not indicate that [REDACTED] had any immigration petitions or applications pending at that time.

Counsel asserts that the failure to disclose her two undocumented children in the United States was not material, as it was not predictably capable of affecting the decision of whether or not to issue a tourist visa. Failure to disclose that information, however, was material in that it cut off a line of inquiry on her possible immigrant intent, which is relevant to her eligibility for a nonimmigrant visa. If she had told the consular officer she had a 10 year old child living in the United States, it would have opened up an avenue of questioning about whether she intended to remain in the United States with that child and her elder child. That line of inquiry may have led to a proper determination that she had immigrant intent, which was relevant in light of the fact that when she did attempt to procure admission to the United States pursuant to her nonimmigrant visa, she did not have a return trip ticket. *See Notice of Visa Cancellation / Border Crossing Card Voidance*, October 13, 1994. As such, the AAO finds in this case the applicant's failure to disclose the fact that she had two undocumented children, ages 19 and 10, in the United States is a material misrepresentation.

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. As the applicant is inadmissible for her representations pertaining to her 1994 nonimmigrant visa, the applicant's other fraudulent statements or material misrepresentations will not be addressed in this decision.

The Field Office Director found that the applicant did not demonstrate that she had a lawful permanent resident mother, as the applicant's birth certificate indicates her mother is [REDACTED] and the permanent resident card she submitted is for [REDACTED]. The evidence of record, however, supports a conclusion that the applicant's mother is the same person identified by the permanent resident card submitted. The applicant's mother listed "Adela" as a name she is also known by on her Form I-485 application. Furthermore, although the mother's name is different on the applicant's and her brother's birth certificates, the maternal grandparents' names are the same. In addition to this documentation, statements from family and friends also establish the relationship between the applicant and [REDACTED]. As such, there is sufficient evidence of record to conclude that [REDACTED] is the applicant's mother, and consequently, a qualifying relative for a waiver of inadmissibility under section 212(i) of the Act.

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 mother states she will experience medical and emotional hardship without the applicant present. She explains that, even though she lives with her son [REDACTED] and not the applicant, the applicant comes over every day to cook for her care for her, provide her with company, and take her to her doctor's appointments. The mother adds that the applicant helps her with her medications, and makes sure she eats a diet which helps with her diabetes and hypertension. Medical records are submitted in support. The applicant's brother [REDACTED] states in a letter that although his mother lives with him, he does not have the time to take care of her the way the applicant does, as he has a full-time job and other family responsibilities. The mother also states that the applicant helps her with emotional difficulties stemming from the death of her son [REDACTED], who died six years ago. She moreover indicates the applicant assists with her daughter's child, who, according to the applicant's mother, has had a serious disability since he was born. The daughter confirms in a letter that she has a son with Hunter's Syndrome, and that the applicant helps take care of him when the daughter has appointments or other commitments. A letter from an outpatient clinic is submitted in support.

The applicant's mother also claims she cannot relocate to Mexico. She states that she does not have any family in Mexico who could help take care of her, as both her children are in the United States. Counsel indicates that the applicant's mother has several relatives, including her children, in the United States, and that the only relative the applicant's mother has in Mexico is her granddaughter, Virginia. The mother additionally contends that she would not be able to receive the same level of medical care in Mexico as she has in the United States. She adds that she would also have to give up her lawful permanent residence if she relocated to Mexico.

The record contains sufficient evidence indicating the applicant's mother, who is 75 years old, has diabetes and hypertension. The mother's son and granddaughter indicate in letters that they cannot take care of her. Furthermore, the applicant has submitted statements and medical records establishing that she is the one who takes her mother to medical appointments, assists with controlling her medical conditions, and otherwise takes care of her. The applicant's mother additionally notes that the applicant provides her with emotional support, and helps her deal with issues related to her son's death. The mother's medical issues, her emotional and physical dependence on the applicant, and the mother's relatively advanced age are all factors relevant to an analysis of extreme hardship.

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 medical, emotional, or other impacts of separation on the applicant's parent 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 returns to Mexico without her mother.

The applicant has also shown that her mother would experience extreme hardship upon relocation to [REDACTED] Mexico, where the applicant resided from 1960 to 1999. Although the applicant's mother is a native and citizen of Mexico, the record reflects that relocation would impact the mother's U.S. lawful permanent resident status. This in turn would entail further separation from

family members and other ties in the United States. Additionally, moving to Mexico would also result in separation from established medical care in the United States. All these hardships are viewed in light of the fact that the applicant's mother is 75 years old.

In light of the evidence of record, the AAO finds the applicant has established that her parent'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, medical, or other impacts of relocation on the applicant's parent 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 parent relocates to [REDACTED]

Considered in the aggregate, the applicant has established that the applicant's mother 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-Morales*, 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.

The negative factors include the applicant's misrepresentation, her 1999 entry without inspection, and her subsequent unlawful status in the United States. The positive factors include the existence of extreme hardship to a qualifying relative, her lack of a criminal history, and evidence of 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.