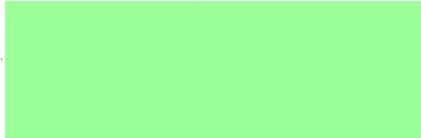


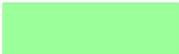
(b)(6)

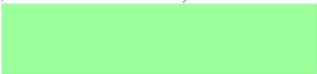


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



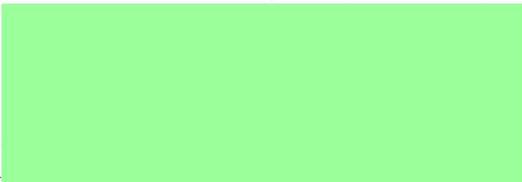
DATE: **FEB 06 2013** OFFICE: PHOENIX, ARIZONA

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:



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 be "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 seeking to procure admission to the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen and the daughter of lawful permanent residents, and she is the beneficiary of approved Petitions for Alien Relative (Form I-130) filed by her spouse and brother. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband, children, and parents in the United States.

The Field Office 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 District Director*, dated November 21, 2006.

On appeal, counsel asserts that the applicant provided numerous reasons, evidence, and supporting documentation in support of her claim that her U.S. citizen husband and children as well as her lawful permanent resident parents would suffer extreme hardship because of her inadmissibility. *See I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*, dated December 18, 2006.

The record includes, but is not limited to: briefs, motions, and correspondence from counsel; letters of support; identity, medical, employment, and financial documents; academic records and certificates; photographs; and criminal history documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides:

(C) Misrepresentation.-

(i) 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.

(ii) Falsely claiming citizenship.-

(I) In general.- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) Exception.- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien ... is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The District Director found the applicant inadmissible for falsely claiming to be a U.S. citizen upon attempting to enter the United States on June 14, 1993, at the [REDACTED] port of entry in [REDACTED] Texas. The applicant was placed in exclusion proceedings,¹ and returned to Mexico the same day. The record supports the finding, and the AAO concurs that the applicant's misrepresentation of her citizenship was material. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996, are ineligible to apply for a Form I-601 waiver. However, provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, eligibility to apply for a waiver. *See USCIS Memorandum, Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators, from Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Donald Neufeld, Associate Director, Domestic Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated March 3, 2009.* Thus, the applicant is eligible to apply for a waiver under section 212(i) of the Act.

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

- (1) The Attorney General [now the Secretary 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

¹ The AAO notes that on August 20, 1993, the Immigration Judge issued an *in absentia* order of exclusion. On April 28, 2010, the Immigration Judge denied the applicant's motion to reopen and rescind the *in absentia* order. On June 28, 2011, the Board of Immigration Appeals (BIA) sustained the applicant's appeal of the Immigration Judge's denial of her motion, and terminated the exclusion proceedings.

in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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. Hardship to the applicant, her adult son, and her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and parents are the only demonstrated qualifying relatives in this case. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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.

Counsel contends that the applicant's spouse would suffer extreme emotional and financial hardship in the applicant's absence as: he relies on her tremendously because she serves as the family's primary caretaker while he serves as the primary breadwinner; he has never been separated from her since their marriage; he would need to maintain separate households and provide sufficient funds for the applicant; he would be devastated as he would be unable to afford a caregiver for their children, he would need to take their children to school, and he would have to take time off during their illnesses; and he would not be able to provide the love and care of their mother.

Counsel also contends that the applicant's mother would suffer extreme emotional and medical hardship in the applicant's absence as: the applicant's mother is 73-years-old and has been diagnosed with high blood pressure and diabetes, which require her to take medication and to visit her doctor every two months; she and the applicant maintain an extremely close relationship; and the applicant cooks for her, takes her to her doctor appointments, and ensures that she takes her medications timely.

Counsel further contends that the applicant's 16-years old, minor daughter needs assistance with photo shoots, traveling, and making contacts because she is an advanced model with the [REDACTED] and her career would not be as successful as it has been without the applicant's permission and presence.

Additionally, the applicant discusses that: her spouse gave her an opportunity to believe in love again as he is hardworking, handsome, and respectful; her spouse is a truck driver and works nights, so she is responsible for appointments, her children's schooling, and the maintenance of their household; and her family has a relationship with her stepdaughter. The applicant's spouse further discusses the dedication that the applicant has to her family, ensuring that her children make a positive impact on society and caring for her elderly parents. He also indicates that, as a semi-truck driver, he must be away from the family home for two days, so the applicant does not work outside their home as she must take care of their children.

The record is sufficient to establish that the applicant's spouse and mother would suffer hardship in the applicant's absence. The applicant's spouse is the sole breadwinner and has been employed by [REDACTED] in a fulltime capacity since August 28, 2006, and currently serves as a Driver Specialist. His job requires him to be "on the road" two days each week, so the applicant maintains their household and she serves as the primary caregiver to her children, including a daughter with an ongoing medical condition related to her eyes. Additionally, the applicant's mother receives ongoing treatment for her medical conditions, and the applicant plays an essential role in assisting her mother with her daily activities. Although the record does not include evidence of economic and labor conditions in Mexico, demonstrating the applicant's inability to contribute to her and her family's households, the AAO nevertheless finds, in the aggregate, that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel contends that the applicant's spouse would suffer extreme hardship upon relocating to Mexico to be with the applicant as: he does not have any ties to Mexico, and has continuously resided in the United States; all of his extensive family members also reside in the United States; he would be unable to find employment because of the economic conditions in Mexico and he does not speak Spanish; he would lose his social security and 401k benefits; his standard of living would dramatically decrease; and he would lose custody of his daughter from a previous marriage, based on the divorce decree.

Counsel also contends that the applicant's parents would suffer extreme hardship upon relocation as they have been lawful permanent residents since 1990 and 1996, and many of their sons and daughters reside in the United States as U.S. citizens or lawful permanent residents.

Counsel further contends that the applicant's children would suffer extreme hardship upon relocation as: their principal language is English, and they would have extreme difficulty adjusting to academic life in Mexico; they would be in a place without a family support system; they would need to discontinue their education to assist the family economically; and the applicant and her spouse would be unable to provide them adequate medical care.

The record is sufficient to establish that the applicant's spouse and parents would suffer hardship if they were to relocate to Mexico to be with the applicant. The record reflects that the applicant's spouse has continuously resided in the United States and that her parents continue to maintain their lawful permanent resident status. The record also reflects that the applicant, her spouse, and her children maintain a relationship with the spouse's daughter from a previous marriage. Although the record does not include social, political, or economic conditions in Mexico, the record reflects that the applicant's mother and one daughter continue to receive ongoing treatment for their respective medical conditions. The AAO finds that, in the aggregate, the applicant's spouse would suffer extreme hardship upon relocation to Mexico.

Accordingly, as the applicant has shown that his spouse would suffer extreme hardship, he has established that denial of the present waiver application "would result in extreme hardship", as required for a waiver under section 212(i) of the Act.

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 *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA 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 BIA further stated 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(h)(1)(B) relief must bring forward to establish that he 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse and significant hardship to his parents and children, the applicant's continuous presence for over 25 years, familial and community ties, the payment of taxes, letters of support attesting to the applicant's good moral character, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of her citizenship upon seeking admission to the United States, her subsequent entry into the United States without inspection by immigration officials, her unlawful presence, and her employment without authorization.

Although the applicant's violation of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

(b)(6)

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 and the appeal will be sustained.

ORDER: The appeal is sustained.