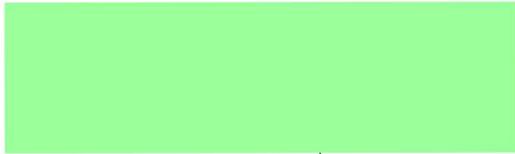


(b)(6)

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

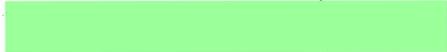


U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 08 2013** Office: MEXICO CITY, MEXICO

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and 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 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 read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mexico City, Mexico, and 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 pursuant to 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 through fraud or the willful misrepresentation of a material fact, and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within ten years of his last departure from the United States. The applicant's spouse and three children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and he denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 18, 2011.

On appeal, the applicant asserts that his spouse has financial and medical problems, and his children are having issues with misconduct and school grades. *Form I-290B*, dated March 18, 2011.

The record includes, but is not limited to, statements from the applicant and his spouse, statements from friends and family, medical records, educational records, financial records, articles and statements in Spanish, and counselor's statements. The entire record, except for the untranslated documents in Spanish, was reviewed and considered in rendering a decision on the appeal.<sup>1</sup>

The record reflects that the applicant presented a counterfeit Form I-551 upon seeking entry to the United States on September 3, 1992. Based on this misrepresentation, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that:

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<sup>1</sup> The AAO notes that the untranslated documents in Spanish will not be considered per the regulation at 8 C.F.R. § 103.2(b)(3).

(b)(6)

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

The applicant entered the United States with inspection and was deported on May 5, 1977; he attempted to enter the United States on September 3, 1992 and was ordered excluded and deported on the same day; he entered the United States without inspection on October 1, 1993; he filed Form I-485, Application to Register Permanent Residence or Adjust Status, on March 26, 1997; the Form I-485 was denied on September 2, 2003; he filed another Form I-485 on March 9, 2007; the second Form I-485 was denied on July 20, 2007; he filed Form I-589, Application for Asylum and Withholding of Removal, on September 28, 2007 and was granted a reasonable fear interview; his removal order was reinstated on January 17, 2008; and he was removed on January 17, 2008.

At a minimum, the applicant accrued unlawful presence from September 2, 2003 until January 17, 2008, the date he was removed. The applicant is inadmissible to the United States under 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 seeking readmission within ten years of his January 17, 2008 removal from the United States.

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

(B) Aliens Unlawfully Present.-

(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.

A waiver of inadmissibility under section 212(a)(9)(B) and section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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*, 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.

The applicant's sister [REDACTED] states that Ciudad Juarez is a very violent city and the applicant's family is concerned about their safety when they visit him there. A licensed counselor states that the applicant's daughter is in therapy due to her anxiety disorder from exposure to violence in Mexico. The licensed counselor states that the applicant's son is being referred to counseling due to excessive fear and nervousness, his symptoms started as a result of visiting the applicant in Mexico and exposure to the violence in Mexico appears to be having an impact on him. The AAO notes the November 20, 2012 Department of State Travel Warning for Mexico which details general safety issues and specifically mentions safety issues in Chihuahua, where Ciudad Juarez is located. It states, in pertinent part:

Chihuahua: Ciudad Juarez and Chihuahua City are major cities/travel destinations in Chihuahua -see map to identify their exact locations: You should defer non-essential travel to the state of Chihuahua. The situation in the state of Chihuahua, specifically Ciudad Juarez and Chihuahua City, is of special concern. The Mexican government reports that 1,933 people were killed in Ciudad Juarez in 2011, down from 3,100 in 2010. Although there has been a further decline in homicides in 2012, Ciudad Juarez still has one of the highest homicide rates in Mexico.

The record reflects that the applicant is residing in Ciudad Juarez. His spouse would be relocating there with their children or would be separated from her children. Her fear for her safety and that of her children is legitimate based on country conditions. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if she resided in Mexico.

The applicant's spouse states that she has had stress, high blood pressure and has felt depressed since the applicant left; her children have felt depressed without the applicant; she was diagnosed with a migraine; her daughter was sent to court for aggressive behavior as the applicant is not here to guide

her; it is hard to be both the mother and father to her children; her daughter is scared to visit the applicant in Ciudad Juarez due to the gang violence there; her daughter witnessed a gang fight the last time she went to Mexico; she has no job and she was denied unemployment; and the applicant was her support system.

The applicant's sister [REDACTED] states that the applicant's spouse was fired from her job because she was ill; his spouse has been depressed, tired and sad; and the applicant's daughter's grades have lowered, she was going to a psychologist, she is scared for the applicant due to violence in Mexico and she has been misbehaving in school. His sister [REDACTED] states that all of his family is concerned for his safety; his daughter had an anxiety attack and was hospitalized; and his daughter dreams of the applicant being killed. The applicant's old neighbor states that she has seen the applicant's spouse struggle a lot and she was hospitalized. A friend of the applicant's spouse states that her family has drastically changed since the applicant was deported; his spouse was hospitalized due to severe migraine pain; she has three children who have suffered greatly with their mother's health problem; and they expose their life when visiting the applicant in Ciudad Juarez. The record includes other statements from friends of the applicant and his spouse make claims similar to the aforementioned claims, and they assert that he supported the family and he is undergoing a difficult time in Mexico. The applicant's daughter details her closeness to the applicant and that she had a nervous breakdown and went to the hospital.

The record reflects that the applicant's spouse is being sued by the State of Texas for being a parent contributing to nonattendance of her daughter. Her 2009 tax return reflects an income of \$17,472. The record reflects that she was discharged by her employer and her unemployment benefit application was not granted. The record reflects that the applicant was employed by construction companies when he was in the United States.

The applicant's spouse's medical records reflect that she was admitted to a hospital for migraine headaches. The record includes discipline referral forms for the applicant's daughter reflecting class disruption and truancy. A licensed counselor states that the applicant's daughter is in therapy due to her anxiety disorder from exposure to violence in Mexico. The licensed counselor states that the applicant's son is being referred to counseling due to excessive fear and nervousness, his symptoms started as a result of visiting the applicant in Mexico and exposure to the violence in Mexico appears to be having an impact on him.

The record reflects that the applicant is experiencing emotional and financial difficulty without the applicant. She also has a medical issue. In addition, her daughter and son are experiencing significant difficulty without the applicant. Her claims related to concern for the applicant's safety and her family's safety when visiting him are supported by country conditions. Considering the hardship factors mentioned, and the normal results of separation, the applicant's spouse would experience extreme hardship if she remained in the United States.

The AAO notes the applicant's conviction for threatening a crime with intent to terrorize under California Penal Code Section 422 in relation to an October 30, 1999 arrest. The AAO finds this to be a crime involving moral turpitude which renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.<sup>2</sup>

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Based on the aforementioned finding of extreme hardship, the applicant has met the extreme hardship requirement of section 212(h)(1)(B) of the Act.

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<sup>2</sup> The AAO also notes the applicant's two convictions for obstructing and resisting an officer under California Penal Code Section 148(a) and two convictions for DUI under California Vehicle Code Section 23152(a) and (b).

The AAO finds the applicant's conviction for threatening a crime with intent to terrorize to be a violent or dangerous crime.

The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

Based on the aforementioned discussion of hardship to the applicant's spouse, the AAO finds that the standard of exceptional and extremely unusual hardship has also been met.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as an overall matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and

humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted).

The adverse factors in the present case are the applicant's deportation orders, convictions, misrepresentation, unauthorized periods of stay, entries without inspection and unauthorized employment.

The favorable factors include the presence of the applicant's U.S. citizen spouse and children, extreme hardship to his spouse and hardship to his children.

The AAO finds that the violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), section 212(h) and section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

It is noted that the applicant remains inadmissible under section 212(a)(9)(A)(ii) of the Act for having been previously deported and not remaining outside the United States for 10 years. Accordingly, he requires permission to reapply for admission to the United States pursuant to Form I-212 in order to establish that he is admissible. He filed a Form I-212 application but it was denied by the field office director on February 18, 2011. The applicant did not appeal the decision of the field office director, and it is not before the AAO in the present proceeding.

**ORDER:** The appeal is sustained. The application is approved.