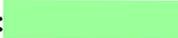


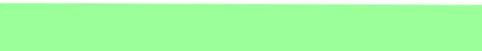


**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **FEB 27 2013** Office: MEXICO CITY, MEXICO 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 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", with a long horizontal line extending to the right.

Ron Rosenberg,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mexico City, Mexico. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted, the matter will be reexamined, and the application will be approved.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts when applying for admission to the United States. She is married to a U.S. citizen. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 21, 2010. The AAO found that the applicant's spouse would experience hardship upon relocation, but not extreme hardship if he remains in the United States. *AAO Decision*, dated May 23, 2012. The AAO dismissed the appeal accordingly.

On motion, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is not allowed to reside in the United States with him. *Form I-290B*, received June 18, 2012.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In this case the applicant's spouse states that since the dismissal of the applicant's appeal his depression has worsened and he now has additional medical debt due to hospital emergency room visits. The applicant has submitted additional evidence which corroborates her spouse's statements on motion, and evidence which further explains the applicant's original evidentiary submissions and the applicant's spouse's extreme hardship.

As the assertions and evidence submitted are sufficient to meet the standard of a motion to reopen the AAO will grant the motion and reexamine the merits of the applicant's case.

In addition to the materials previously submitted and discussed in the AAO's decision, the applicant has submitted the following evidence on motion: a statement by the applicant's spouse; an employment letter for the applicant's spouse, dated June 8, 2012; financial documentation, including a mortgage statement, an insurance premium statement, an energy bill and copies of monthly loan payments for two loans; a statement from [REDACTED], regarding the mental health of the

applicant's spouse, dated June 6, 2012; a statement from the applicant's spouse's oldest son; a real estate tax bill for 2011 in the applicant's spouse's name; pay stubs for the applicant's spouse; seven loan payment statements for a medical bill related to the applicant's spouse; and monthly statements for other utilities such as phone, TV and car insurance. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant presented a counterfeit Resident Alien Card (Form I-551) in an attempt to enter the United States on November 15, 2005. Thus, the applicant attempted to enter the United States by materially misrepresenting her identity. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on motion.

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 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.

A waiver of inadmissibility under 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 an applicant or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-Moralez*, 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.

(b)(6)

The AAO previously determined that the applicant's spouse will experience extreme hardship upon relocation to Mexico. The AAO finds no basis to disturb that conclusion, and as such, will examine the applicant's assertions of hardship to her spouse if they remain separated.

The evidence submitted on motion relates to, and substantially explains, previously submitted evidence. On motion, the applicant's spouse asserts that he is experiencing emotional and financial hardship due to separation from the applicant. *Statement in Support of Appeal*, dated June 2, 2012. The applicant's spouse submits a detailed explanation of his financial burden, listing 21 various expenses, including the support of the applicant in Mexico, for a total of \$2,837.94 in monthly expenses. The record contains substantial evidence corroborating many of the listed expenses. Although the evidence does not justify the exact amount of monthly financial obligation asserted by the applicant's spouse, there is sufficient evidence to demonstrate a delicate and uncommon financial burden on the applicant's spouse. As such, the AAO will consider the financial hardship due to separation a significant factor when aggregating the impacts on the applicant's spouse.

With regard to the emotional hardship experienced by the applicant's spouse, the record contains a statement submitted on motion and two documents submitted on appeal. As discussed on appeal, the AAO found sufficient evidence to demonstrate the presence of complicating medical conditions on the applicant's spouse, including gout and symptoms of depression. *Statement of* [REDACTED], dated May 6, 2010. The statement of [REDACTED], dated June 6, 2012, does not diagnose the applicant's spouse with a mental health condition, but states that the symptoms present in the applicant's spouse are consistent with the self-reported prior diagnosis of anxiety and depression. When the AAO considers this evidence in light of previously submitted evidence it can determine that the applicant's spouse, now 47 years of age, is experiencing some impact related to physical and emotional conditions due to separation. While the record is still unclear as to how the applicant's presence will mitigate certain impacts on her spouse, the record is sufficiently documented to demonstrate that her spouse will likely experience ongoing health and emotional issues which could be alleviated or mitigated by her presence in the United States.

When these impacts are considered in conjunction with the financial burden on the applicant's spouse, the AAO finds them sufficient to demonstrate that he will experience hardships rising to the level of extreme due to separation.

As the applicant has established that a qualifying relative will experience extreme hardship, we may now move to determine whether she warrants a waiver as a 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation. The favorable factors in this case include the presence of the applicant's spouse, the extreme hardship the applicant's spouse would experience due to the applicant's inadmissibility and the lack of any criminal record while residing in the United States. Although the applicant's misrepresentation is a serious violation of immigration law, the favorable factors in this case outweigh the negative factors; therefore favorable discretion will be exercised.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the motion will be granted and the application will be approved.

**ORDER:** The motion is granted and the application is approved.