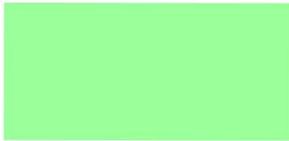


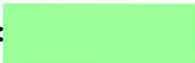


**U.S. Citizenship  
and Immigration  
Services**

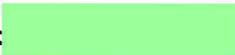
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DATE: **FEB 27 2013** OFFICE: SAN FRANCISCO, CALIFORNIA

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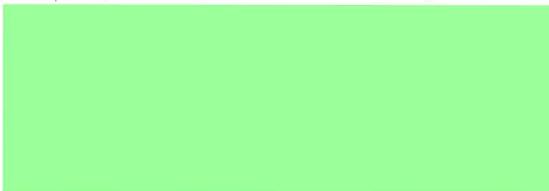
IN RE:

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 read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg  
Acting 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 record reflects 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 having procured entries to the United States through willful misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of approved Petitions for Alien Relative (Form I-130) filed by her spouse and son. 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 and adult son in the United States.

The Field Office Director concluded the applicant failed to establish 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 Field Office Director*, dated September 6, 2011.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application by failing to properly consider the applicant's health conditions and her spouse's financial situation. Counsel also asserts additional documentary evidence demonstrates the applicant's spouse and family would suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion*, dated October 4, 2011; *see also Counsel's Correspondence*, dated January 11, 2013.

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

Section 212(a)(6)(C) of the Act provides, in relevant 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 Act is inadmissible.

...

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

The Field Office Director found the applicant inadmissible for having procured admission to the United States on two occasions by presenting a lawful permanent resident card that did not belong to

her.<sup>1</sup> The record supports the finding, and the AAO concurs that the misrepresentations were material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in relevant 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 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 daughter, and her grandchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative 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,

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<sup>1</sup> The AAO notes the record indicates the applicant obtained a lawful permanent resident card using the identity of her sister-in-law, and subsequently procured admission upon presenting the fraudulently obtained lawful permanent resident card on six occasions about: May 10, 1983; June 1985; June 1988; January 20, 2009; December 20, 2009; and December 2010.

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 the applicant’s spouse would suffer extreme emotional and financial hardship in the applicant’s absence as: he and the applicant have been together for more than 30 years; he has always cared for the applicant, who suffers from various medical conditions that have required multiple surgeries and ongoing treatment, and it would be difficult for him to know she would lack access to medical care in Durango, Mexico; he would fear for her personal safety, utilizing public transportation to access medical care; and he cannot afford the maintenance of two households, the applicant’s medical care in Mexico, or the travel costs to take care of her there. Counsel also contends USCIS ignored the specific nature of family separation in the instant case. *See Brief in Support of Appeal*, dated October 31, 2011. The AAO acknowledges that in *Salcido-Salcido v. INS*, *supra*, the Ninth Circuit held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has

abused its discretion.” (Citations omitted.) The present case arises within the jurisdiction of the Ninth Circuit, and due consideration is given to family separation in the present matter.

The applicant also discusses the care she provides for her grandchildren while her daughter is at work, and the inability of her family to save extra money as they have “a tight” budget. And, the applicant’s spouse indicates their daughter would have to quit her job without the applicant’s assistance as she would be unable to afford childcare costs, and he and their daughter drive the applicant to her medical appointments as she is permanently unable to drive due to her epilepsy.

The record is sufficient to establish the applicant and her spouse have been married for almost 33 years, and the applicant’s spouse is the primary breadwinner through his self-employment as a gardener. The record also establishes the applicant receives ongoing treatment for her medical conditions, including Basal Cell Carcinoma, Rectal Carcinoid Tumors, Seizure Disorder, Dyslipidemia, and Hypothyroidism, and she has undergone reconstruction and flap placement of her right cheek. *See Medical Letter Issued by* [REDACTED] *dated January 3, 2013.* Additionally, the AAO notes the U.S. Department of State’s current travel advisory for Mexico states: “ ... possession of any amount of prescription medication brought from the United States, including medications to treat HIV, and psychotropic drugs such as Valium, can result in arrest if Mexican authorities suspect abuse, or if the quantity of the prescription medication exceeds the amount required for several days’ use ... Adequate medical care can be found in major cities ... Care in more remote areas is limited ... facilities may lack access to sufficient emergency support.” *Travel Advisory, Mexico*, issued June 21, 2012. Accordingly, the AAO finds, in the aggregate, the applicant’s spouse would suffer extreme hardship upon separation from the applicant.

Counsel contends the applicant’s spouse would suffer extreme hardship upon relocating to Mexico to be with the applicant as he would be: separated from his family members; unable to provide the applicant comparable care for her medical conditions; unable to find employment opportunities due to his advanced age and lack of skills; and subjected to violence.

The record is sufficient to establish the applicant’s spouse would suffer hardship if he relocated to Mexico to be with the applicant. He has continuously resided in the United States for over 31 years and maintains close familial and community relationships. Additionally, the U.S. Department of State has issued a travel warning for Durango, Mexico: “ ... Several areas in the state continue to experience high rates of violence and remained volatile and unpredictable.” *Travel Warning, Mexico*, issued January 20, 2012. Accordingly, the AAO finds, in the aggregate, the applicant’s spouse would suffer extreme hardship upon relocation to Mexico.

As the applicant has shown her spouse would suffer extreme hardship, she 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-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.

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 lawful permanent resident spouse and family, familial and community ties, the payment of taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of her identity in obtaining a lawful permanent resident card, which she used to procure entry to the United States on six occasions.

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)

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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.