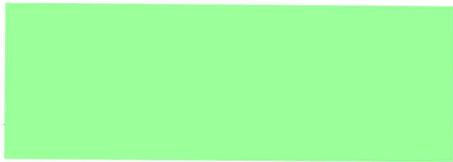


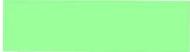


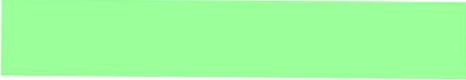
U.S. Citizenship
and Immigration
Services

(b)(6)

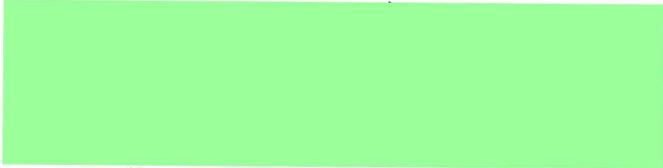


DATE: **JAN 30 2013** OFFICE: CALIFORNIA SERVICE CENTER

File: 

IN RE: 

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 PETITIONER:


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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter came before the Administrative Appeals Office (AAO) on appeal and on motion to reopen, and both were dismissed. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted and the underlying application will be approved.

The applicant is a native and citizen of Guatemala 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 attempting to procure admission into the United States through fraud or willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and three U.S. citizen children.

The 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 Director*, dated November 29, 2006.

On appeal, the AAO concluded that the applicant's spouse would not suffer extreme hardship, and dismissed the appeal accordingly. *See Decision of the AAO*, dated February 19, 2009. On motion to reopen, the AAO found that the applicant's spouse would experience extreme hardship were he to relocate to Guatemala but not as a result of his separation from the applicant. *See Decision of the AAO*, dated March 19, 2012.

In response, counsel submits new facts and evidence addressing the extreme hardship the applicant's spouse would experience if he remains in the United States, separated from the applicant. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received April 23, 2012. Based on the new evidence submitted, the motion to reopen meets the requirements under 8 C.F.R. § 103.5(a)(2) and is granted.

The record contains, but is not limited to: Forms I-290B; counsel's memorandum; statements from the applicant's spouse, children, sister-in-law, and friends; tax returns and financial documents; the applicant's sister-in-law's medical documentation; Social Security records; photographs; employment documents; school records and letters; country-conditions information; and articles about married parents, crime prevention and day care. The entire record was reviewed in rendering a decision on motion.

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.

The record reflects that the applicant attempted to enter the United States in March of 1995 using a fraudulent document in another person's name. The applicant was denied entry

and returned to Guatemala the same day. Three months later, the applicant entered the United States without inspection. The applicant was therefore found to be inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest her inadmissibility.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department 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.

A waiver of inadmissibility under section 212(a)(2)(A)(i)(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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her qualifying relative. 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-Morales*, 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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-I-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 record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s 50-year old spouse is a native of Guatemala and a citizen of the United States. He married the applicant in July 1996 and states that he and the applicant have had a loving relationship for the past seventeen years. He asserts that his hardship would be greater if he stayed in the United States without the applicant than if he returned to Guatemala with her. He reports that he was laid off from his employment in 2008, and his unemployment benefits expired in 2009. Documentation regarding his unemployment benefits was submitted to corroborate his

claims. Because he could not find other employment, he joined the applicant's business of cleaning houses. The applicant's 2011 tax return shows that she has a cleaning service business with a net profit of \$20,025. Letters from the applicant's children and friends corroborate that the applicant has a cleaning business that her husband joined after he became unemployed. These letters indicate that the applicant conducts all business practices, including communication with clients and scheduling, because she speaks and understands English better than her spouse. The applicant's spouse explains that without the applicant, he would clean fewer houses, which would result in less income for their family.

The applicant's spouse indicates that their expenses include a monthly mortgage of \$922 and monthly taxes of \$257 for their three-story home. He states that while they rent one floor to the applicant's sister-in-law at \$600 per month, their other tenants are leaving, which would be a loss of \$700 per month. The applicant's spouse maintains that "to support three children and work cleaning houses would be impossible."

The applicant's spouse further states that his sister, who lives on the third floor of their house, cannot take care of the children because of her many medical conditions. A letter from her doctor indicates that she has asthma, neuropathy and fibromyalgia and cannot provide child care for the applicant's children. Medical documentation also shows she has sleep apnea and takes medications with side effects of dizziness and drowsiness. She states that she is disabled by her illnesses; as a result she has become unconscious and fallen in the past. She also indicates that she sleeps with an oxygen tank and has arthritis, back pain and osteoporosis. She notes that she is too nervous to drive and uses public transportation for her doctor's appointments and personal necessities. She concludes that taking care of the applicant's children would be an "enormous hardship" for her given her medical conditions.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including his financial situation, dependency on the applicant's employment, responsibilities in caring for three minor sons, maintaining a household, and emotional well-being. The AAO also notes that the applicant and her husband's yearly income, as reflected in their tax return, is low; the Federal Poverty Guidelines indicate that a five-person household has a \$27,010 annual income. *See* 2012 Poverty Guidelines, Office of The Assistant Secretary for Planning and Evaluation, Fed. Reg. Vol. 77, No. 17, Jan. 26, 2012, available at: <http://aspe.hhs.gov/poverty/12fedreg.shtml>. Thus, any decrease in their income as a result of the applicant's removal would result in an extreme financial loss to the applicant's spouse. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The AAO has previously found extreme hardship to the applicant's spouse were he to relocate to Guatemala. There is no indication that country conditions in Guatemala or the applicant's spouse's personal circumstances have changed such that he would not experience extreme hardship upon relocation to Guatemala.

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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 favorable factors in the present case include extreme hardship to the applicant's spouse as a result of the applicant's inadmissibility; the applicant's significant family and community ties in the United States; the financial and emotional support she provides to her family; her ability to maintain a business, pay taxes, expenses and a home mortgage; her good moral character, as described in several letters of support; and her lack of a criminal record. The unfavorable factor is the applicant's immigration violation of misrepresentation in 1995. Although the applicant's violation of immigration law is significant and cannot be condoned, the positive factors in this case outweigh the negative factor. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden and the application will be approved.

ORDER: The motion is granted and the underlying Form I-601 application is approved.