



(b)(6)

Date: **JAN 31 2013**

Office: MILWAUKEE, WI

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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, Milwaukee, Wisconsin. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying waiver application will be approved.

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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. The AAO dismissed a subsequent appeal, also concluding that the applicant failed to establish the requisite hardship.

The applicant filed a motion to reopen contending that there is new evidence to show extreme hardship. Counsel contends, among other things, that the couple's ten-year old son has recently been suffering from tics and has been diagnosed with an anxiety disorder. In addition, counsel contends the boy's asthma now requires chronic, daily medication and that he recently underwent a biopsy for a growth on his head.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

The record contains, *inter alia*: a letter from the couple's son's psychologist; a letter from the couple's son's physician; a letter from the school principal; letters from the applicant's husband's siblings; a letter from a child development center; an affidavit from [REDACTED]; copies of medical records; a psychological report; articles and other background materials on Mexico; copies of tax returns, bills, and other financial documents; and a letter from the applicant's husband's employer. The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes, that in February 2000, the applicant attempted to enter the United States by presenting a photo-altered Mexican passport with a nonimmigrant visa in another person's name. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, counsel contends that the couple’s ten-year old son, [REDACTED], has recently suffered psychological and medical problems. According to counsel, [REDACTED] began suffering from tics and was diagnosed with an anxiety disorder in 2011. Counsel contends the applicant is the sole caretaker of the couple’s two U.S. citizen children and that [REDACTED] psychotherapist states that her absence would cause a great deal of disruption to the family. In addition, counsel contends that [REDACTED] asthma has developed into acute asthma, requiring multiple inhalers and treatment every four hours. Counsel states that when the applicant initially applied for a waiver, [REDACTED] used an inhaler only when needed; however, now, his asthma requires chronic daily medication. Furthermore, counsel contends [REDACTED] recently underwent a biopsy for a nevus sebaceous on his head, which carries a risk of cancer and requires follow-up treatment. Counsel contends that the applicant’s husband, [REDACTED] would suffer extreme hardship as a single parent caring for two children, one of whom has psychological and medical problems, if the applicant’s waiver application were denied. Counsel submits additional evidence in support of the waiver application, including letters from [REDACTED] siblings who state they would be unable to help him, as well as documentation showing [REDACTED] mother was hospitalized in March 2012.

After a careful review of the entire record, the AAO finds that the applicant’s husband, [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. If [REDACTED] decides to remain in the United States without his wife, he would suffer extreme hardship. The additional evidence submitted with the motion contains ample evidence showing that the couple’s son, [REDACTED], has been in psychotherapy since March 2011 due to an anxiety disorder and tics. A letter from his

psychologist states that [REDACTED] has just recently become stable and that if his mother departs the United States, it would not only be detrimental to [REDACTED] emotional well-being, but would also be stressful for [REDACTED] to manage Brian's anxiety disorder alone. The record also contains a letter from [REDACTED] physician, corroborating the claim that [REDACTED] has asthma that must be "managed with chronic daily medication every day of the year" A copy of a Pathology Report in the record also corroborates the contention that [REDACTED] had a biopsy of his right parietal scalp in July 2011. The AAO acknowledges that if [REDACTED] decides to remain in the United States, his mother and siblings would be unable to assist him as the record shows his siblings have their own children and his mother has a history of stroke and continues to experience numbness on the left side of her body. Furthermore, newly submitted documentation shows that day care expenses for the couple's two children would be \$237.50 per week. According to tax documents in the record, in 2007, [REDACTED] earned \$23,126.73. The AAO recognizes that the additional child care expenses would pose a significant financial burden on [REDACTED]

Regarding counsel's assertion that there was a clear, factual error in the AAO's decision, the AAO disagrees. According to counsel, the applicant has not worked outside the home and the employment letter in the record is not for the applicant, but for her mother. A review of the evidence shows that the applicant did, indeed, work outside the home. The employment letter was sent with the couple's 2007 tax return which was filed "married filing jointly," listing [REDACTED] as the spouse. Copies of W-2 forms for 2007 in the record indicate that [REDACTED] reported wages were \$23,925.21 and [REDACTED] reported wages were \$23,126.73, for a combined total equal to the wages listed on the couple's Form 1040. The W-2 form for [REDACTED] shows she worked at [REDACTED] Incorporated, the same employer who wrote the letter. Therefore, the employment letter is for the applicant herself and not her mother. According to the employment letter, dated June 26, 2008, the applicant has worked full-time since January 2002. Moreover, according to the applicant's Biographic Information form (Form G-325A), dated June 27, 2008, she worked at [REDACTED] in 2003. As such, the AAO stands by its previous statement that neither the applicant nor her spouse addresses who cared for the couple's children when the applicant was working full-time for at least five and a half years. In addition, the AAO notes that despite stating in our previous decision that there was insufficient evidence addressing the couple's regular, monthly expenses, such as rent or mortgage, although the applicant has not submitted additional bills, including property tax bills, there remains no evidence addressing the couple's rent or mortgage.

Nonetheless, considering these unique circumstances of the case cumulatively, particularly the couple's son's physical and psychological problems, the AAO finds that the hardship [REDACTED] would experience if he remained in the United States without his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Furthermore, returning to Mexico to avoid separation would be an extreme hardship for [REDACTED]. The AAO recognizes that relocating to Mexico would disrupt the continuity of care [REDACTED] has been receiving for his psychological and medical issues. In addition, the AAO notes that according to the psychological evaluation in the record, [REDACTED] has lived in the United States for almost twenty

years, since he was nineteen years old, and both of his parents and five of his six siblings all reside in the United States. Moreover, the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for parts of Mexico, including Jalisco, where the applicant and her husband were born. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering the unique factors of this case, the AAO finds that the hardship [REDACTED] would experience if he returned to Mexico to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her lawful permanent resident husband and two U.S. citizen children; the hardship to the applicant's entire family if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

ORDER: The motion will be granted and the underlying waiver application is approved.