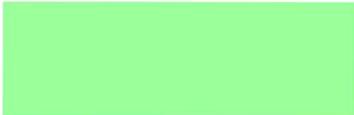


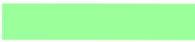
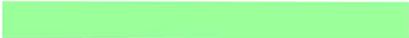


**U.S. Citizenship
and Immigration
Services**

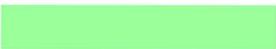
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DATE: JUL 17 2013 OFFICE: LOS ANGELES, CALIFORNIA

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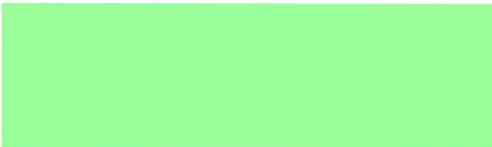
IN RE:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted and the underlying application will be approved.

The applicant is a native and citizen of Mexico who has resided in the United States since September 1996, when he entered the United States without inspection. The applicant had attempted to enter the United States earlier that month by presenting a Form I-586 border crossing card which did not belong to him to immigration officials. The applicant was placed in exclusion proceedings and was ordered excluded on September 24, 1996. He 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish his spouse would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated March 11, 2009.

The AAO dismissed the appeal, finding the applicant did not meet his burden of proof in demonstrating that his spouse would experience extreme hardship in the event of separation from the applicant or relocation to Mexico. *See AAO Decision*, December 30, 2011. On the applicant's first motion, the AAO found the applicant did not establish his spouse would experience extreme hardship upon separation and consequently denied the I-601 application. *See AAO Decision on Motion*, March 26, 2013.

On this second motion, counsel contends the applicant's spouse will experience financial, psychological, and family-related difficulties without the applicant present. Counsel moreover asserts the applicant merits a favorable exercise of discretion. Educational, medical, and financial records are submitted in support, along with a statement from the applicant's spouse.

The record includes, but is not limited to, the documents listed above, real property records, immigration related documents, educational and medical records, articles on country conditions in Mexico, declarations from the applicant's spouse, evidence of birth, marriage, naturalization, and permanent residence, letters from employers, copies of U.S. federal income tax returns, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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

- (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:

- (1) The [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.

In the present case, the record reflects that on September 20, 1996 the applicant presented a Form I-586 border crossing card bearing the name of "[REDACTED]" to immigration officials in an attempt to gain admission into the United States. *See record of deportable alien*, September 20, 1996. The applicant admitted that the card did not belong to him, and he was ordered excluded from the United States. *See Order of Immigration Judge*, September 24, 1996. At an immigration interview the applicant admitted he entered the United States without inspection later that month. Inadmissibility is not contested on this second motion. The AAO therefore again affirms that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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. 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 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 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 applicant's spouse claims she will experience financial, psychological, and family-related difficulties if the applicant returned to Mexico without her. The spouse explains her two young sons need the applicant not only to be a good father figure, but to help with [REDACTED]'s asthma and [REDACTED]'s urological issues. The spouse contends she worries about her children's well-being and emotional development without their father present, especially during their formative years. Letters from physicians, medical records, and articles on childhood development are submitted in

support. The spouse discusses her own emotional difficulties, indicating she cannot sleep because she worries about her family's future. Counsel claims the spouse will also suffer emotional hardship if the applicant returns to [REDACTED] Mexico given the dangerous country conditions there. The spouse adds she would not be able to meet her financial obligations without the applicant's support. Paystubs, income tax returns, and copies of household bills are submitted on motion. Counsel additionally states the spouse would have to sell the house, and they would not recover any money from the sale due to the lack of equity and closing costs.

On the applicant's first motion, the AAO found the record contained sufficient evidence to establish his spouse would experience extreme hardship upon relocation. The present record does not indicate this finding should be disturbed. The AAO therefore affirms the applicant would experience extreme hardship upon relocation to Mexico.

On this second motion, the applicant has demonstrated his spouse will experience financial difficulties without him present. Documentation submitted on the applicant and his spouse's income, as well as household bills, establishes that the spouse would not be able to meet her financial obligations without the applicant's income. As such, the AAO finds the applicant's spouse would experience financial hardship without the applicant present.

The applicant has also submitted sufficient evidence to show his spouse would experience family-related and emotional difficulties in addition to financial hardship. The record reflects the applicant and his spouse have two sons, ages eight and ten, and that the younger son has asthma, which, according to his physician, is a continuing medical issue. The applicant has demonstrated that his son's medical condition adds to the hardship normally experienced by that of a parent raising two children alone. Furthermore, the record contains some indication that the spouse experiences emotional difficulties given the prospect of separation from the applicant, who she has been married to for 12 years. Additionally, the spouse's worry over the applicant's safety in [REDACTED] Mexico is corroborated by the U.S. Department of State's current travel warning, which discusses TCO and narcotics-related violence in that area. *U.S. Department of State, Travel Warning: Mexico*, November 20, 2012.

The AAO therefore finds there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without his spouse.

Considered in the aggregate, the applicant has established that his U.S. citizen spouse would face extreme hardship if the applicant's waiver request is denied.

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 unfavorable factors include the applicant's misrepresentation, his September 1996 order of exclusion and subsequent entry without inspection, his period of unlawful stay in the United States, and evidence that he was employed without authorization. Favorable factors in this case consist of extreme hardship to his qualifying relative, documentation that the applicant has paid U.S. federal income taxes, and his lack of a criminal record.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. The motion is granted, and the I-601 application is approved.

The AAO notes the applicant remains inadmissible under section 212(a)(9)(A)(i) of the Act because he was ordered excluded from the United States on September 24, 1996.¹ On August 6, 2007, the applicant filed a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, which is still pending.

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

¹ The applicant admitted he subsequently entered the United States without inspection later that month.