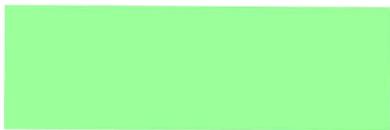


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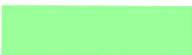


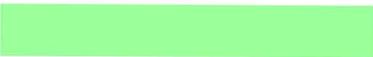
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: JUL 23 2013

Office: FRESNO

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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-

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico, 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. He is seeking a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, September 17, 2012.

On appeal, the applicant contends that USCIS erred in misconstruing the extreme hardships that his wife will suffer as a result of the applicant's inadmissibility, if he is unable to remain in the United States, and in giving the evidence too little weight. In support of the appeal, the applicant submits documentation including: an updated hardship statement and a supportive statement; a psychological evaluation; a letter confirming mental health counseling; confirmations of birth; financial information, including tax returns and W-2s, utility bills, vehicle registration, and car loan; and photographs. The record also includes: prior hardship statements; marriage and birth certificates; an employment letter; and photographs. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 [...].

The record shows that the applicant entered the United States in B2 status on February 20, 2012 and married his qualifying relative the following day. On March 26, 2012, his wife filed a Form I-130 immigrant petition for him, and the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). At his June 28, 2012 adjustment interview, the applicant admitted that his February 20, 2012 entry was for the purpose of marrying in a civil ceremony and that invitations had been sent prior to his arrival. He also stated that he and his wife previously had a

church wedding in Mexico on August 13, 2011. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting his intent when he procured admission to the United States as a nonimmigrant visitor when he in fact intended to get married and remain in the United States with his U.S. Citizen wife.

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 the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-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*, the Board provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

For reasons discussed below, the AAO finds that the situations of the applicant’s wife and child, should the applicant be unable to remain here, comprise circumstances which, on aggregate, meet the extreme hardship requirement under the Act.

Regarding whether the applicant has established that his wife would suffer extreme hardship by relocating to Mexico, the record reflects that her relatives in the United States include her three siblings (all U.S. citizens), five aunts and uncles who are U.S. citizens or permanent residents, and the lawful permanent resident grandmother who raised her. A psychological evaluation notes that physical and emotional abuse the qualifying relative and her siblings suffered and witnessed at the hands of their father represents a childhood trauma that would make problematic for her returning to the country where the abuse occurred. *See Psychological Report*, February 28, 2013.

Country condition information supports the concern that high unemployment will make it difficult for her husband to find work in Mexico, thus requiring his wife to seek employment to help support him there, despite being a new mother having no contacts in Mexico besides the applicant’s family and no work history. Official U.S. government reporting also confirms the qualifying relative’s concerns regarding safety and security risks involved in moving to Mexico, reflects that conditions have worsened since she was taken to live in Mexico by her parents from 2007 to 2011, and advises U.S. citizens against traveling to parts of the country including that area of Jalisco state where she and the applicant both lived. *See Travel Warning—Mexico*, U.S. Department of State (DOS), November 20, 2012.

In addition to personal safety concerns, the applicant’s wife contends that a move to rural Mexico will adversely affect her infant child by exposing him to unhealthy conditions to which his immune

system is unaccustomed. She fears her nine-month old will be at risk of dehydration, be unable to tolerate a different diet, and become ill as a result. Country condition reports confirm the qualifying relative's concerns about conditions such as pollution, lack of access to care, and poor sanitation. Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to Mexico as a result of safety threats, poor employment prospects, and health care that is below U.S. standards. Further, although the applicant's wife lived for a time in Mexico and is of Mexican descent, the record reflects that she was born, raised, and has lived in the United States for most of her 20 years.

Regarding the claim of emotional hardship due to separation from the applicant, although not establishing that she is suffering from post-partum depression (PPD) per se,¹ the evidence shows that the qualifying relative delivered her first child on September 20, 2012 shortly after turning 19, had experienced physical and emotional abuse by her father during childhood that made her prone to depression, and was diagnosed with major depression and anxiety in February 2013. Reviewing that her symptoms of stress include insomnia, fatigue, hopelessness, appetite loss, headaches, and cessation of lactation after only one month, the aforementioned report explains that "[e]xposure to situations of separation [...] causes the patient to re-experience and re-open wounds from the past..." *Psychological Report*, February 28, 2013. The psychotherapist attributes the qualifying relative's instability and trust issues to the emotional unavailability of her father after her parents took the family to Mexico for four years, when she was 14, and concludes, "[d]ue to her current symptomology and present situation, this patient's depressive symptoms will worsen if she is forced to separate from her husband, putting her condition at risk of deteriorating." *Id.* There is evidence the applicant's wife lacks the financial resources to visit the applicant to ease the pain of separation.

Regarding the financial component of separation hardship, there is evidence that the applicant is the sole breadwinner, while his wife is a caregiver to their infant child and homemaker who has no history of compensated employment. Documented high unemployment in Mexico shows that, besides removing income and a stabilizing adult presence from the household, the applicant's departure would likely impose on his wife the burden of supporting a second household abroad. She claims that removal of the family's sole source of income would be economically devastating, the record reflects the existence of common household expenses (e.g., utilities, vehicle loan/insurance) to be met, and the psychotherapist confirms that the qualifying relative is fearful of being an unemployed single mother unable to meet her financial obligations here, let alone send money to help the applicant live in Mexico.

For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's wife and child will experience due to his inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

¹ The qualifying relative's claim to have received a specific medical diagnosis of PPD is unsubstantiated by the record.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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):

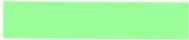
In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal 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 favorable factors in this matter are the extreme hardships the applicant's wife and child would face if the applicant were to reside in Mexico, regardless of whether she accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; a history of gainful employment; a history of lawful admission using a tourist visa; and his candid explanation regarding the circumstances of his fraudulent entry. The unfavorable factors in this matter are the applicant's willful misrepresentation.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.



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.

ORDER: The appeal is sustained. The waiver application is granted.