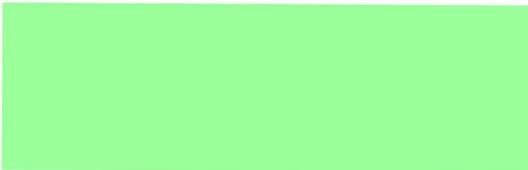


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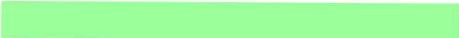
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



Date: **JUN 06 2013**

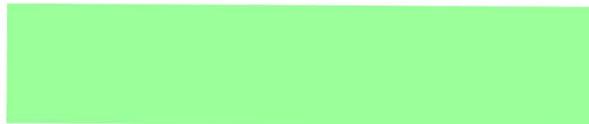
Office: ANAHEIM, CA

FILE: 

IN RE: Applicant: 

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:



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

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DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the psychiatric evaluation in the record and country conditions in Mexico.

The record contains, *inter alia*: a letter from the applicant; a letter from the applicant's husband, Mr. [REDACTED] a letter from a psychiatrist; letters from [REDACTED] employer; letters from the applicant's siblings; letters from the couple's children; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; and an approved Petition for Alien Relative (Form I-130). 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 the applicant does not contest, that she attempted to enter the United States in February 1998 using another person's border crossing card. The record shows the

applicant was convicted of fraud and misuse of a visa and conspiracy to elude inspection, and was sentenced to forty-five days imprisonment. The applicant was granted voluntary departure by an immigration judge and departed the United States in April 1988. 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, the applicant's husband, [REDACTED], states that he has been working in Phoenix, Arizona, since 1994. According to [REDACTED] every 15 days for the past ten years, he has been traveling 500 miles to visit his wife and children in Baja California. He states it is getting more expensive and is getting more difficult for him to continue these visits. [REDACTED] contends he is going through a lot of problems with his children since he is not there to be an authority figure and he wants his family to have the opportunity to get away from the violence and insecurity in Mexico.

After a careful review of the record, the AAO finds that if the applicant's husband, [REDACTED], returned to Mexico, where he was born, to avoid the hardship of separation, he would experience extreme hardship. The AAO acknowledges [REDACTED] contention that he has lived in the United States for almost twenty years, since 1994. In addition, a letter from his employer in the record shows he has worked for the same company since August 2000. The AAO recognizes that relocating to Mexico would entail leaving a job he has held for over twelve years and all of the benefits that come with it. Furthermore, the AAO takes administrative notice of the U.S. Department of State's Travel Warning, urging U.S. citizens to exercise caution when traveling to the northern part of Baja California, including Mexicali, where the applicant was born and is currently living. U.S. Department of State, *Travel Warning, Mexico*, dated November 20, 2012. Considering these unique factors cumulatively, 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 also finds that if [REDACTED] remains in the United States without his wife, he would suffer extreme hardship. The record shows that [REDACTED] and his wife have been married for twenty-four years. The AAO recognizes that [REDACTED] has remained in the United States, separated from his wife and children, for many years and acknowledges his contention that his frequent visits and the continued separation is getting more difficult and more expensive. The record contains a letter from a psychiatrist describing [REDACTED] depression, decreased motivation, tearfulness, poor appetite, poor sleep, and minimal interaction with others. The psychiatrist has diagnosed Mr. [REDACTED] with Major Depressive Episode. The record also contains a letter from his employer stating that [REDACTED] has been a very responsible and efficient employee, who has had good work performance since 2000, but that in the past six months, he has been distracted, depressed, and

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irritable. His employer states that [REDACTED] frustration at being separated from his family is affecting his work performance and his health, corroborating his claim that the separation from his family has taken a cumulative toll on him. In addition, the AAO recognizes the applicant's concern for his family's safety in Mexicali, particularly given the Travel Warning described above. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if the applicant's waiver application was denied is extreme, going beyond those hardships ordinarily associated with inadmissibility.

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 factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her lawful permanent resident husband and U.S. citizen sister; the extreme hardship to the applicant's husband if she were refused admission; the applicant's remorse over her immigration violation; and the applicant's lack of arrests or criminal convictions for the past twenty-five years.

The AAO finds that, although the applicant's immigration violation is 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. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.