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

(b)(6)

DATE: JUN 14 2013 Office: ALBUQUERQUE, NM FILE:

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 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 Field Office Director, Albuquerque, New Mexico, and 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service March 19, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director's decision incorrectly applied the extreme hardship standard, and that the applicant's spouse will experience a range of impacts rising to the degree of extreme hardship. *Form I-290B*, received April 20, 2012.

The record contains, but is not limited to, the following documentation: a brief from counsel; statements from the applicant and her spouse; medical records pertaining to the applicant's spouse; background medical documentation on Diabetes; a psychological evaluation of the applicant's spouse by a statement from , pertaining to the applicant's spouse; background documentation on depression; country conditions materials on Mexico; tax records, pay stubs and other financial records; and statements from family members and associates of the applicant and her spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) 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 chapter is inadmissible.

The record indicates that the applicant entered the United States on April 9, 1996, as a B-2 visitor for pleasure authorized to stay until October 1996. She remained until she departed to Mexico in late 1999 and returned to the United States on April 7, 2000, with a new Border Crossing Card. She failed to tell the inspection agent that she had overstayed her prior visa and that she was intending to return to the United States to resume her unlawful residence. The applicant has admitted that she departed the United States and returned on at least two occasions, each time intending to resume her unlawful residence without telling the inspection agent. As such, the applicant is inadmissible under § 212(a)(6)(C)(i) for having misrepresenting her intent to reside in the United States.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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-Moralez,* 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 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.

Counsel asserts on appeal that the applicant's spouse would experience physical, medical and financial hardships rising to the level of extreme hardship upon relocation to Mexico. *Brief in Support of Appeal*, receieved April 20, 2012. Counsel explains that the applicant's spouse suffers from diabetes, hypertension, high cholesterol, mild dysphagia and depression and would be unable to afford medcial care in Mexico. He further states that the applicant's daughter, currently residing in the United States, suffers from Eczema, and that having to provide for a child with a medical condition in an area known for its violence and corruption would heighten the impacts of relocation on the applicant's spouse. Counsel further explains that the applicant's spouse has family ties to the United States, and economic ties in the form of a job which provides health insurance for himself and his family.

The record contains documentation supporting these assertions by counsel. In a letter dated May 16, 2012, states that the applicant's spouse suffers from Type II Diabetes, hypertension and elevated cholesterol. She explains the heightened standard of care necessary to treat the applicant's spouse's conditions, and states that a relocation to Mexico would result in significant physical impacts to the applicant's spouse. Based on this evidence, the AAO can

conclude that the applicant's spouse has several medical conditions which require treatment and monitoring. As such, it is reasonable to expect that having to sever the continuity of medical care with the doctors and health care system familiar with his medical condition would result in a substantial hardship impact to the applicant's spouse.

In addition, the AAO notes that the applicant's spouse's current health care needs are provided by benefits of his current employment. The record contains country conditions materials discussing the national and local conditions in Mexico, indicating that the applicant's spouse would most likely reside in an area troubled with drug war violence, posing an additional physical burden on him.

The record does not contain any documentation which establishes that the applicant's daughter suffers from Eczema. However, the record does contain other documentation supporting counsel's assertion that the applicant's spouse would struggle to find employment and be able to afford the healthcare necessary to treat his conditions in Mexico.

When the hardship impacts upon relocation are examined in the aggregate, the AAO finds that they rise above the common impacts to a degree constituting extreme hardship.

With regard to hardship upon separation, counsel asserts that the same factors giving rise to impacts upon relocation would give rise to physical and emotional hardship impacts due to separation. Counsel states that the applicant's spouse suffers from diabetes and depression, that these conditions heighten the impact of separation from the applicant, and result in an additional physical impact from having to provide for a child who also has a medical condition, in this case asthma. Counsel also notes that the applicant's spouse's emotional impact is heightened by the fear he has for the applicant's safety because of the conditions in Mexico where she resides.

As noted above, the record contains sufficient documentation to establish the applicant's spouse suffers from several medical conditions. As such, it is reasonable to expect that he would experience a heightened physical impact as a result of having to care for his two children without the applicant's assistance.

With regard to the emotional hardship on the applicant's spouse, counsel refers to a statement in the record from , discusses the background and current situation of the applicant's spouse and concludes that he is suffering from major depression and at an increased risk of worsening due to the presence of medical conditions.

The record also contains a statement breaking down the financial obligations of the applicant's spouse, as well as a number of bills and invoices for utilities and other financial obligations. This evidence is sufficient to demonstrate that the applicant's spouse will experience a financial impact related to separation from the applicant.

When the physical, emotional and financial impacts due to separation are considered in the aggregate, the AAO finds that they rise above the common impacts to a degree of extreme hardship.

As such, the record establishes that a qualifying relative will experience extreme hardship due to the applicant's inadmissibility.

The AAO may now examine whether the applicant warrants a waiver as a matter of discretion.

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 section 212(h)(1)(B) 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and unlawful stay in the United States. The favorable factors in this case include the presence of the applicant's spouse, the hardship he would experience due to her inadmissibility, the heightened medical needs of her spouse and youngest daughter and the lack of any criminal record while residing in the United States. Although the applicant's misrepresentation and unlawful stay are serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The field office director's decision will be withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.