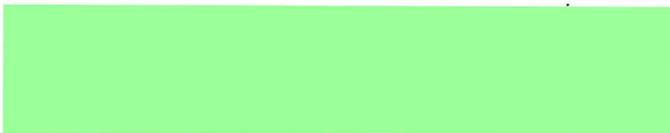




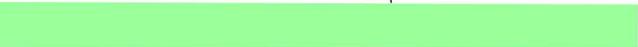
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Date: **MAR 18 2013**

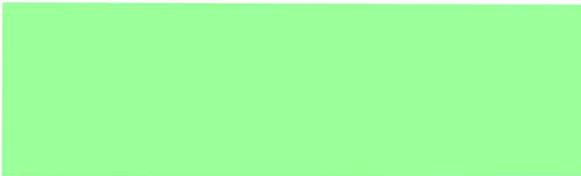
Office: TUCSON, ARIZONA

FILE: 

IN RE: Applicant: 

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

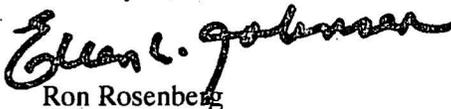
ON BEHALF OF APPLICANT:



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 Acting Field Office Director, Tucson, Arizona. The Administrative Appeals Office (AAO) dismissed the appeal and rejected a subsequent motion to reopen and reconsider as untimely filed. The AAO will reopen the matter on its own motion and the underlying waiver application will be granted.

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 fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen 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 a qualifying relative and denied the waiver application accordingly. The AAO dismissed the appeal, concluding that although the applicant established extreme hardship to her husband if he remained in the United States, she did not establish extreme hardship to her husband if he relocated to Mexico to avoid the hardship of separation. The AAO rejected as untimely filed a subsequent motion to reopen and reconsider.

Counsel now submits evidence that the motion to reopen and reconsider was, indeed, timely filed and requests that the motion and the evidence that was submitted with the motion be considered on the merits. The AAO finds counsel's evidence of timely filing the appeal to be persuasive. Therefore, the AAO will reopen the matter on its own motion.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on February 4, 2005; copies of the birth certificates of the couple's three U.S. citizen children; letters from [REDACTED] letters of support; two psychological evaluations for [REDACTED] copies of [REDACTED] medical records; letters from [REDACTED] employers; psychological test data for the couple's daughter, [REDACTED] letters from the children's school; a screening assessment for the couple's son; copies of pay stubs, tax records, and other financial documents; copies of photographs of the applicant and her family; a copy of the U.S. Department of State's Country Conditions Report 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 motion.

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 concedes, that she entered the United States on May 2, 1998, with a non-immigrant visa she obtained by using her sister's birth certificate. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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 AAO had previously found that the applicant's husband, [REDACTED] would experience extreme hardship if he decided to remain in the United States without his wife. The AAO will not disturb that finding. On motion, [REDACTED] submits a new letter describing the hardship he would experience if he returned to Mexico, where he was born, to avoid the hardship of separation.

After a careful review of the entire record, the AAO finds that if [REDACTED] relocated to Mexico to be with his wife, he would experience extreme hardship. The record contains an updated psychological evaluation for [REDACTED]. According to the psychologist, [REDACTED] is at severe risk of suicide and his stress coping abilities tested in the problem range. The psychologist contends that his coping abilities score, in combination with an elevated suicide risk score, requires immediate intervention. According to the psychologist, if [REDACTED] were to leave the United States, he is likely to endure stressors that will further jeopardize his mental health. In addition, as stated in the AAO's previous decision, the record shows that the couple's son, [REDACTED] has limitations in cognitive functioning and is in special education classes and speech therapy. The AAO recognizes [REDACTED] assertion that it is very likely he will not have medical insurance in Mexico and fears he will be unable to continue his son's speech and language therapy services should he relocate to Mexico. Moreover, a letter from [REDACTED] employer shows he has been working as a cook at the same restaurant since November 2001. The AAO recognizes that relocating to Mexico would entail leaving his job of more than eleven years and all of its benefits. Furthermore, the AAO acknowledges [REDACTED] fears regarding safety in Mexico and recognizes that the U.S. Department of State has issued a Travel Warning urging U.S. citizens to defer non-essential travel to some areas in Mexico, including Sinaloa, where the applicant was born. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering these unique circumstances cumulatively, the AAO finds that the hardship Mr. Palomino would experience if he returned to Mexico 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.

(b)(6)

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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 in order to obtain an immigration benefit, her 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 U.S. citizen husband and three U.S. citizen children; the extreme hardship to the applicant's entire family if she were refused admission; numerous letters of support in the record describing the applicant as an outstanding employee, a loving mother who is highly involved in her children's education, and a person who is always willing to help others in need; 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. Accordingly, the appeal will be sustained.

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