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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: NOV 14 2013

Office: LOS ANGELES

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: 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:

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, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.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. The applicant is seeking a waiver of inadmissibility in order to reside in the United States as the beneficiary of the Petition for Alien Relative (Form I-130) filed by her mother.

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, November 22, 2011.* The AAO similarly concluded the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility and dismissed her appeal. *Decision of the AAO, July 22, 2013.*

On motion, counsel for the applicant provides additional support for the claim that a qualifying relative will suffer extreme hardship due to the waiver denial. In support of the motion, he provides documentation including: a medical evaluation and information, disability claims, an updated statement of the applicant, and photographs. The record also contains an appeal brief, hardship and supportive statements, naturalization and birth certificates, medical progress notes and laboratory results, education certificates, financial information, translated and untranslated Spanish-language documents, and documentation regarding previous immigration benefits applications. 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 applicant claims that, when she sought assistance getting a U.S. work permit in the 1990s, the individual who helped had her sign a blank document and then filed an application for temporary

protected status (TPS) listing her nationality as "Salvadoran." Although immigration records do not show the applicant filed an Application for TPS (Form I-821), they confirm that she represented her nationality as "Salvadoran" on a Form I-589 bearing her signature dated November 17, 1995.

The applicant signed documentation, under penalty of perjury, listing a false country of birth and citizenship,<sup>1</sup> in order to obtain work authorization in the United States. As the applicant had the responsibility to review for accuracy all forms and statements prior to signing, the AAO agreed with the field office director's determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. As the applicant no longer contests this inadmissibility, we limit consideration to whether she has established the requisite hardship for a waiver of inadmissibility.

A waiver of inadmissibility under section 212(i)(1) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen mother 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

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<sup>1</sup> The Form I-589, executed by the applicant under penalty of perjury on November, 17, 1995 outlined that she was born in El Salvador. In addition, the Form I-765, Application for Employment Authorization, signed on November 16, 1995 and a fingerprint card signed on November 15, 1995 list the applicant's country of birth as El Salvador.

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.

Counsel has augmented the record with new evidence regarding the claimed hardship to a qualifying relative, and it now reflects that the cumulative effect of problems impacting the applicant’s 77-year-old mother represents hardship that rises to the level of extreme. The record now shows her nearly 10-year history of ongoing complications of poor venous circulation, including pain and itching from skin wounds that do not heal and cause mobility problems. Together with documentation of the original 2004 diagnosis of a “venous stasis ulcer” skin condition, the applicant provides an August 2013 referral to a vascular surgeon for evaluation of a skin rupture signaling recurrence of her chronic, ulcerated leg wound. Documentation on the record, including background information on venous ulcers, establishes that the applicant’s mother suffers from a serious condition that it is both age-related and recurrent, and that such ulcers can take years to heal and develop serious complications, including cancer. According to the record, the initial occurrence of this ulcer took over a year to heal, led to the qualifying relative’s cessation of employment in her late sixties, and resulted in her filing for state and federal disability benefits in 2010. Documentation indicates that, since 2004, the applicant’s mother has gone from being mainly ambulatory to a state of being primarily sedentary, due to the need to stay in a recumbent position with her leg raised in order to minimize inflammation.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. Counsel states that the rural Oaxaca town to which the applicant and her mother would relocate does not offer the treatment options needed to address her condition. Official U.S. government reporting establishes that high quality care is available only in Mexico City, and that “[h]ospitals in Mexico do not accept U.S. domestic health insurance or Medicare/Medicaid and will expect payment via cash, credit, debit card, or bank transfer.” *Mexico—Country Specific Information*, October 16, 2013. Because the applicant’s mother’s limited financial resources will make it difficult to travel to where suitable care is available in Mexico, relocating there will limit her access to care while severing contact with her existing treatment providers here.

The applicant submits information concerning her mother’s situation to support the claim that relocating to Mexico would go beyond inconveniencing a qualifying relative. Counsel clarifies that she has not traveled to Mexico since 2001 for medical care, and this cost-saving practice preceded the onset of her chronic leg ulcers. The record also shows that other ailments now require her to take prescription medications and adhere to a diet that may be difficult to maintain in Mexico with limited finances. Although moving to Mexico would not involve forfeiture of a job, it would impact the qualifying relative’s limited social security benefits that comprise her only income. Evidence that the applicant claims her mother as a dependent for tax purposes and that her mother’s sole financial resource is supplemental security income (SSI) totaling about \$7,500 yearly supports the claim that relocating would severely impact her financial situation. We thus conclude that the applicant has met her burden of showing that relocation would result in hardship beyond the typical results of removal or inadmissibility that rises to the level of extreme.

Regarding hardships due to separation from the applicant, the augmented record establishes that her mother will experience significant problems beyond the inconvenience of not having a family member for companionship. There is evidence that, even before being diagnosed with varicose veins and ulcerated sores from poor circulation in her legs, the applicant’s mother had a close bond with her daughter. The qualifying relative’s declining mobility increased her reliance on the applicant for daily chores -- including washing clothes, dressing and undressing, grocery shopping, and meal preparation -- as well as for transporting her to doctor visits and translating between English and Spanish. The record reflects that the applicant is a single parent to two sons, ages 35 and 11 years old. Her mother’s worsening condition has increased the applicant’s role to that of primary caregiver to both her younger son and her mother. She works as a homecare provider whose training allows her to assist the qualifying relative with basic healthcare and household chores for which she would otherwise have to seek outside help. She reports her tasks include telephoning from work to remind her mother, who is increasingly forgetful, to eat meals the applicant prepares and take medication. There is no indication the applicant’s mother has anyone else able to take her daughter’s place, should she be unable to remain in the country. The medical evidence is now sufficient for us to conclude that the applicant’s mother requires special assistance due to her ambulatory restrictions. Further, these restrictions, coupled with forgetfulness and other medical problems, show the applicant’s mother would be unable without great difficulty to visit her daughter in Mexico to ease the pain of separation.

Regarding financial hardship, counsel for the applicant asserts that the applicant's mother relies on her for financial stability. Evidence indicates that the qualifying relative, her daughter, and the applicant's minor son live together in a nearly \$1,100 per month apartment rented by the applicant. The applicant's 2012 tax return showing she contributes 80% of household income, with her mother's social security benefits of about \$7,500 representing the balance, supports the claim that the applicant's mother lacks the resources to afford this residence alone. The latest documentation available – a bank statement from 2013 -- demonstrates that the qualifying relative has little income, but few expenses. Her daughter indicates that she pays most household expenses, thus allowing her mother's SSI to be used mainly for healthcare costs. The evidence shows that if the applicant departed the United States, her mother would be unable to assume responsibility for expenses her daughter currently pays and meet her financial obligations. The applicant's departure would thus impose economic hardship on the qualifying relative.

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

The documentation on record, when considered in its totality, reflects the applicant has established that her U.S. citizen mother 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-Morales*, 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 mother will face if the applicant returns to Mexico, regardless of whether she joins the applicant there or remains here; supportive statements; the applicant’s over 25-year residence<sup>2</sup> in the United States; lack of any criminal record; and history of gainful employment. The unfavorable factors in this matter concern the multiple occasions on which the applicant misrepresented her country of birth and nationality/citizenship when seeking immigration benefits.

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. Accordingly, the motion is granted and the prior decision of the AAO will be withdrawn.

**ORDER:** The motion is granted and the prior AAO decision withdrawn. The appeal is sustained.

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<sup>2</sup> Immigration records support the applicant’s claim on one of her fraudulent applications to have last entered the United States on January 23, 1987, but she also claims to have entered without inspection in November 1987.