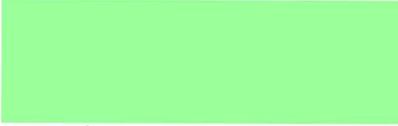


(b)(6)

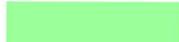


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

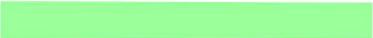


Date: **OCT 21 2013**

Office: SAN JOSE, CA

FILE: 

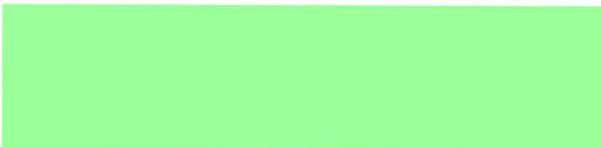
IN RE:

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 (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 waiver application was denied by the Acting Field Office Director, San Jose, California, and the Administrative Appeals Office (AAO) dismissed an appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision withdrawn. The waiver application will be approved.

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 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 acting field office director found that the applicant established extreme hardship to her husband if he relocated to Mexico, but did not establish extreme hardship to her husband if he decided to remain in the United States. The field office director denied the waiver application accordingly. The AAO dismissed the appeal, also finding that although the applicant established extreme hardship upon relocation, she did not establish that her husband would suffer extreme hardship if he remained in the United States.

On motion, counsel contends that the AAO and the field office director should have found that the applicant established extreme hardship. Counsel submits additional evidence of hardship on motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's initial decision, the record also contains an updated declaration from the applicant's husband, Mr. [REDACTED] a psychological evaluation, and articles addressing depression. The entire record was reviewed and considered in rendering this decision on motion.

Section 212(a)(6)(C)(i) of the Act provides:

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 counsel does not contest on motion, that the 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.<sup>1</sup>

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.

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<sup>1</sup> As discussed in a separate decision by the AAO addressing the applicant’s Form I-212, the applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act as an alien previously removed from the United States.

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.

After a careful review of the entire record, including the additional documentation submitted on motion, the AAO finds that the applicant’s husband, Mr. [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that if Mr. [REDACTED] relocated to Mexico to be with his wife, he would experience extreme hardship. The AAO will not disturb that finding. The AAO also finds that if Mr. [REDACTED] remains in the United States without his wife, he would suffer extreme hardship. An updated declaration from Mr. [REDACTED] submitted on motion states that he is a recovering alcoholic and that he fears he would relapse into using alcohol if he was separated from his wife. According to Mr. [REDACTED] his father and sister are also alcoholics and his sister was also a “Meth’ addict.” In addition, he states that he suffered from the separation of his parents and that he was constantly uprooted, moving from place to place. A psychological evaluation submitted on motion corroborates Mr. [REDACTED]’s contentions and diagnoses him with Major Depression, Alcohol Dependence and Abuse, and Post Traumatic Stress Disorder (PTSD). According to the evaluation, Mr. [REDACTED]’s father is an alcoholic who was violent and beat Mr. [REDACTED]’s mother and was verbally abusive to the entire family. The psychologist explains that Mr. [REDACTED] suffers from PTSD as a result of witnessing domestic violence and from the long-term verbal and emotional abuse he suffered as a child. According to the psychologist, most of Mr. [REDACTED]’s family

members are alcoholics and drug addicts and, therefore, Mr. [REDACTED]'s alcohol abuse not only has a strong genetic component, but was also an attempt to self-medicate his PTSD. The psychologist contends that Mr. [REDACTED]'s wife, who threatened to leave him if he did not stop drinking, is his primary support for his sobriety, that she is currently the leader of the local [REDACTED] group for families of people who are alcoholics, and that if his wife left the country, he would be at high risk of relapse for alcohol abuse as well as increased psychiatric symptoms, psychiatric decompensation, and hospitalization. Considering the unique circumstances of this case cumulatively, the AAO finds that the hardship Mr. [REDACTED] would suffer if he remains in the United States is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. [REDACTED] faces extreme hardship if the applicant is refused admission.

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 factors in the present case include: the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit; the applicant's removal from the United States; the applicant's subsequent entry into the United States without inspection; and periods of unauthorized presence and 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, two children, and other relatives; the extreme hardship to the applicant's entire family if she were refused admission, including hardship to the applicant's parents, both of whom the record shows have cancer; numerous letters of support describing the applicant as a devoted mother, wonderful wife, and responsible worker with a strong work ethic; the applicant's occupation as a nurse's aide who works in hospitals helping the elderly; the fact that the applicant has paid taxes while working in the United States; 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.

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 motion is granted and the prior AAO decision dismissing the appeal is withdrawn. The waiver application is approved.