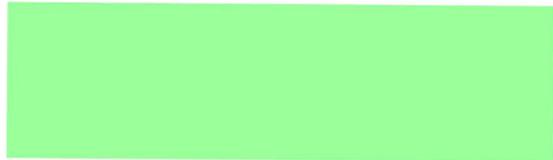


(b)(6)

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

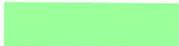


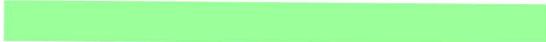
U.S. Citizenship
and Immigration
Services



DATE: **OCT 31 2013**

OFFICE: MIAMI

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 cursive script, appearing to read "Michael Shumway".

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by Miami Asylum Office on behalf of the Field Office Director, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and two children.

In a decision, dated May 18, 2012, the field office director determined that the applicant failed to establish that her U.S. citizen spouse would face hardship rising to the level of extreme, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant's spouse submits additional documentation of hardship.

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

- (i) 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) of the Act provides:

- (1) 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 record reflects that the applicant attempted to enter the United States on July 17, 2005 by presenting her valid laser visa card. During secondary inspection, the immigration officer found that the applicant had in her possession: a notebook containing budgetary information; a notice of a municipal court trial date for a citation issued in Texas on January 5, 2009 and addressed to the applicant with an El Paso address; an auto insurance card showing the same El Paso address, but the name [REDACTED] and the applicant specifically excluded from the policy; handwritten receipts of payments made to [REDACTED] for the vehicle named in the other documents; and copies of the citation issued in January 2009. The applicant stated at the time that she bought a vehicle from a

man who lives in Texas, but that she was not driving that car because she thought she was not allowed to drive a car with Texas plates. She also stated that she worked at a restaurant in El Paso, Texas; that the address on the documents was her fiancé's address; and that she only visited her fiancé at this address. We note that the applicant gave a home address in [REDACTED] Mexico and that she and her fiancé were married in Mexico on June 8, 2007. Based on this information the applicant was found to be an intending immigrant and was then expeditiously removed under 212(a)(7)(A)(i) of the Act as an applicant for admission not in possession of a proper immigrant document to reside and work in the United States. She was not found inadmissible under Section 212(a)(6)(C) of the Act.

Soon after the applicant's removal she states that she entered the United States through the Zaragoza, Bridge of the Americas, Port of Entry and returned to Mexico two months after this entry. She states that she entered the United States as a passenger in a vehicle, but was never questioned by the inspecting officer. She states that she never spoke to the officer and after answering a question from the driver about an expired sticker, the officer waived them through into the United States.

We find the alleged circumstances and manner in which the applicant was admitted into the United States after her removal in July 2005, as alleged by the applicant in her statements, to be improbable. Without additional supporting evidence, we will not find that the applicant entered the United States upon inspection, but without showing any documentation to obtain admission into the United States. Because the applicant did not have a legally issued document to enter the United States, it is more plausible that she would have been admitted by presenting fraudulent documentation, or that she entered without inspection. Regardless, it is the applicant's burden to demonstrate that she is admissible. Thus, we will not disturb the finding of the field office director that the applicant is inadmissible under 212(a)(6)(C) of the Act for having misrepresented a material fact to procure admission into the United States.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The record of hardship includes: a statement from the applicant's spouse, a statement from the applicant, a statement from the applicant's daughter, medical documentation, financial documentation, news articles regarding conditions in [REDACTED] and when crossing the border, a letter from the applicant's spouse's employer, and documentation regarding crime in the vicinity of the applicant's home in Mexico.¹

We find that the applicant has shown that her spouse is suffering extreme hardship as a result of separation and would suffer extreme hardship as a result of relocation. The record indicates that the applicant and her two daughters reside in [REDACTED] while the applicant's spouse resides in El Paso, Texas. The record indicates that the applicant's spouse has suffered financially and in his career because of his frequent trips to Mexico and his financial support of his wife and children in Mexico, without the applicant being able to work in the United States. The record indicates that the applicant has experienced significant health problems, which have increased the family's debt, and that the applicant's spouse has several debts which are now in collection. The record also indicates that the applicant's spouse has been working for his current employer for seven years and has worked hard to build his career with this company. Furthermore, the applicant's spouse expresses particular concern over the rising violence and crime in [REDACTED]. The record includes a news article and other documentation regarding murders and violent crime in [REDACTED] and in the area surrounding the applicant's current residence. The applicant's spouse states that he cannot sleep and is concerned about his family's safety in [REDACTED]. We note that the current U.S. State Department Travel Warning supports the applicant's spouse's statements regarding safety considerations in [REDACTED]. Thus, we find that given the applicant's spouse's financial and emotional hardships, as well as the conditions his wife and two young daughters are living in, that he is suffering extreme hardship as a result of separation and would suffer extreme hardship as a result of relocation. Considered in the aggregate, the applicant has established that her U.S. citizen spouse would face extreme hardship if her waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

¹ We note that the record contains numerous documents in the Spanish language with no English translation. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional

adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the applicant's family ties to the United States, the hardship her inadmissibility is causing to her U.S. citizen relatives, the applicant's lack of a criminal record, the applicant's involvement with her church, and, as stated by her husband, the applicant's attributes as a mother and wife. The unfavorable factors include the applicant's removal from the United States, her illegal entry into the United States, her unauthorized employment in the United States, and her unlawful residence in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.