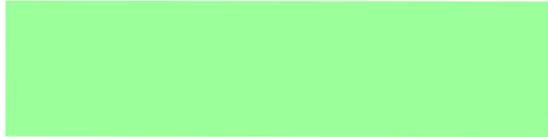




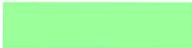
U.S. Citizenship
and Immigration
Services

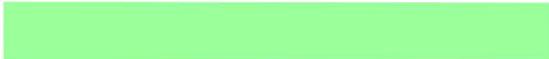
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Date: **AUG 27 2014**

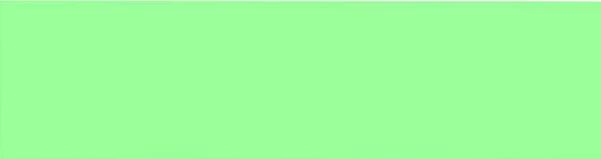
Office: FRESNO

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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fresno, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant, a native and citizen of Mexico, 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 seeking to procure admission to the United States through fraud or misrepresentation. The record indicates that the applicant is married to a lawful permanent resident and is the mother of three U.S. citizen children. She is also the daughter of U.S. lawful permanent resident parents. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen brother. 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 lawful permanent resident spouse, U.S. citizen children, and lawful permanent resident parents.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, September 24, 2013.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) erred in finding that the applicant failed to establish extreme hardship to his qualifying relatives if the waiver application is not approved, and submits additional evidence of medical hardship to the applicant's parents.

The record includes, but is not limited to, the following documentation: a brief filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion; a brief filed by the applicant's attorney in support of Form I-485, Application to Register Permanent Residence or Adjust Status; statements by the applicant's spouse, son, and parents; medical documentation; financial documentation; letters of reference; and country-conditions information on Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that on January 14, 1996, the applicant sought to procure admission to the United States by presenting a U.S. permanent resident card belonging to another person and was subsequently deported from the United States. The applicant thus made a willful misrepresentation to U.S. immigration officials in order to gain admission to the United States. The applicant does not contest her inadmissibility.

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

The Attorney General [now Secretary of the Department of Homeland Security (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.

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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse and lawful permanent resident parents are the only qualifying relatives in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 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. INS*, 138 F.3d 1292, 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.

The applicant’s father and mother reside in the United States, and have been lawful permanent residents of the United States since 1997. Both parents are suffering from medical conditions, and counsel states that the applicant provides the primary support to her parents.

The record indicates that the applicant’s father is 82 years old and suffers from arterial systematic hypertension, mixed hyperlipidemia, and peptic ulcer disease, which require daily medication. The applicant’s father submitted a statement asserting that the applicant cares for his health, takes him to his medical appointments, and helps him with his medication. He also states that he depends upon the applicant for everything he needs.

The record further indicates that the applicant’s mother is 80 years old, suffers from atrial fibrillation, hypothyroidism, mild coronary artery disease, hypertension, dyslipidemia, allergies, osteoarthritis, insomnia, and depression. The applicant’s mother states that she depends on the

applicant for her medical care, including taking her medications and attending her doctor's appointments for her blood tests, which occur every two weeks.

The applicant's parents live with the applicant, and the applicant serves as their primary source of support. Financial documentation in the record indicates that the applicant's parents have a bank account with a balance in December 2012 of \$1,762.29. While the record indicates that the applicant's parents have a U.S. citizen son residing in the United States who can provide them with some financial support, the son formerly resided in New Jersey and now resides in Texas. The record indicates that the applicant's parents live with her and she is the primary care-giver for her parents.

The record establishes that if the waiver application were denied, the applicant's parents would experience medical and financial hardship and the loss of their primary source of support if they were separated from the applicant. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if they remained in the United States without the applicant.

With respect to relocation, the record indicates that the applicant's parents have resided in the United States for a number of years, and as noted above, became lawful permanent residents in 1997. Although the applicant's parents were born in Mexico and are familiar with the language and customs of that country, due to their ages, their medical conditions, and the length of time they have lived in the United States, relocation to Mexico would present a hardship to them. While counsel states that the applicant's father formerly traveled to Mexico to receive medical treatment, he notes that the applicant's father is currently receiving ongoing treatment in the United States.

Based on the evidence on the record, the applicant has established that her parents would suffer hardship beyond the common results of removal if they were to relocate to Mexico to reside with the applicant.

As the applicant has established that her qualifying-relative parents will suffer extreme hardship if the waiver application is denied, we find it unnecessary to examine whether her lawful permanent resident spouse will suffer extreme hardship to sustain this appeal.

Thus, the record establishes 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 he 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-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 favorable factors in this matter are the extreme hardships to the applicant's parents, and hardships that the applicant's lawful permanent resident spouse and U.S. citizen children would face, if the applicant were returned to Mexico, regardless of whether they accompanied her or remained in the United States, the applicant's residing in the United States for more than 18 years, her apparent lack of a criminal record, and letters of reference on her behalf. The unfavorable factor in this matter is her attempt to unlawfully enter the United States 18 years ago.

The immigration violation committed by the applicant is serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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 appeal is sustained.