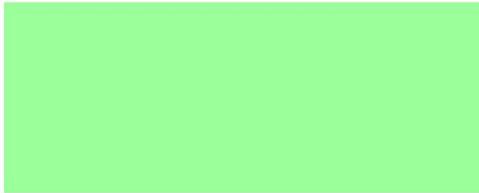


(b)(6)

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

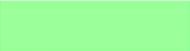


U.S. Citizenship
and Immigration
Services

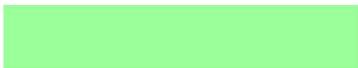


DATE: FEB 06 2014

Office: NEBRASKA SERVICE CENTER

FILE: 

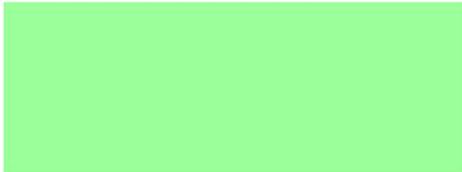
IN RE:

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 Director, Nebraska Service Center, denied the waiver application and 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 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 the son of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his mother in the United States.

The director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel submits additional evidence of hardship and contends that the applicant has established extreme hardship, particularly considering his mother's psychological and medical problems.

The record contains, *inter alia*: a letter from the applicant; a letter from the applicant's mother, Ms. [REDACTED] a letter from Ms. [REDACTED] physician and copies of her medical records; a letter from Ms. [REDACTED]'s service coordinator for personal care services; a letter from the applicant's sister, Ms. [REDACTED]; a letter from Ms. [REDACTED]'s daughter; and photographs of Ms. [REDACTED]. The entire record was reviewed and considered in rendering this decision on the appeal.

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 the applicant concedes, that in 1995, he told the consular officer during his interview that his brother, who had filed a petition for him, was still alive when, in fact, his brother had passed away. Therefore, 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.

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 applicant's mother, Ms. [REDACTED] states that she is eighty-four years old and lives with her daughter. According to Ms. [REDACTED] she has colitis ulcerative, which causes her to go to the bathroom involuntarily, causing a lot of accidents. She states her daughter owns a store and takes her to the store because she cannot afford to pay for someone to take care of Ms. [REDACTED]. Ms. [REDACTED] also contends she has arthritis, has gone to the hospital due to falls, and forgets things. Ms. [REDACTED] states that her husband passed away and that the applicant is her youngest son. She contends that her son can help take care of her, that she does not want to go to a nursing home, and wants to see her son before she dies. Furthermore, she states she fears the violence in Mexico where her son lives because people get killed every day.

After a careful review of the entire record, the AAO finds that if the applicant's mother decides to remain in the United States, she would suffer extreme hardship. The record shows that Ms. [REDACTED] is currently eighty-four years old. A letter from her physician indicates she has numerous, serious medical problems, including, but not limited to: ulcerative colitis complicated by persistent bloody diarrhea, anemia, quadriparesis, vascular insufficiency with severe dermatitis, deep vein thrombosis, severe degenerative joint disease with mobility limitations, unsteady gait with frequent falls, insomnia, major depression, and anxiety disorder. Copies of her medical records indicate her multiple medical conditions are unstable, that she needs help with eating, bladder and bowel function, and that her speech, hearing, and sight are all impaired. A letter from the applicant's sister, Ms. [REDACTED] indicates that caring for their mother is getting out of control and is a situation that is more than she can handle alone. According to Ms. [REDACTED] she owns her own business, a nutritional store. She states that because her mother needs to be taken care of twenty-four hours a day, she takes her mother to work and has to close the store when her mother has accidents. Ms. [REDACTED] claims she cannot afford paying an employee to help in the store or to help care for her mother. A letter from the service coordinator of Ms. [REDACTED] personal care services indicates that she visits Ms. [REDACTED] once or twice a month. This letter corroborates the contentions that Ms. [REDACTED] health is deteriorating, that she went to the emergency rooms twice after falls, and that she lives with her daughter who has been caring for her for years. According to the service coordinator, in addition to her daughter, Ms. [REDACTED] also needs the applicant to help care for her. Considering these unique circumstances cumulatively, the record establishes that the hardship the applicant's mother would experience if she remains in the United States and separated from the applicant is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's mother returned to Mexico to be with her son, she would experience extreme hardship. As stated above, the record shows the applicant's mother has been diagnosed with numerous, serious medical problems for which she requires significant assistance on a daily basis. Relocating to Mexico would disrupt the continuity of her health care. In addition, the record indicates that the applicant's mother has been a lawful permanent resident since 2000. She would need to readjust to living in Mexico after having lived in the United States for the past thirteen years, a difficult situation made more complicated considering her advanced age and medical problems. Furthermore, the U.S. Department of State has issued a Travel Warning for parts of Mexico, including [REDACTED] where the applicant was born and currently resides, acknowledging that crime and violence remain serious problems throughout the state of [REDACTED]. *U.S. Department of State, Mexico Travel Warning*, dated January 9, 2014. Considering all of these factors cumulatively, the record establishes that the hardship Ms. [REDACTED] would experience if she returned to Mexico to be with her son is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

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 factor in the present case includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen mother and sister; the extreme hardship to the applicant's entire family if he were refused admission; and the applicant's lack of any arrests or criminal convictions. The AAO finds that, although the applicant's immigration violation is 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 appeal is sustained.