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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090

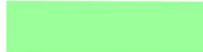


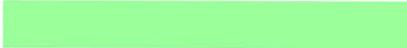
U.S. Citizenship  
and Immigration  
Services



Date: JUL 14 2014

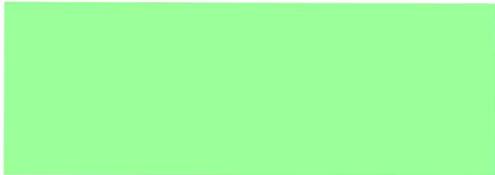
Office: ALBUQUERQUE

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of 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,

*for* 

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Albuquerque, New Mexico, denied the waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the beneficiary of a spousal Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside with his wife in the United States.

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*, April 5, 2013.

On appeal, counsel for the applicant contends that USCIS erred in concluding that the applicant's wife would not suffer extreme hardship as a result of the applicant's inadmissibility. In support, counsel provides a brief and evidence including financial information for the applicant and his wife, as well as of the applicant's mother-, father-, and brother-in-law; supportive statements; medical information; identification documents; and photographs. The record also contains documentation submitted with the waiver application, including: hardship and supportive statements; birth and marriage certificates; financial information, including tax returns, W-2s, pay stubs, bank statements, mobile home installment contract, plot lease, utility bills, and other expenses; a Form I-94; medical records and information; photographs; and country condition information, including a travel warning and news articles. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States [...], and who again seeks admission within 3 years of the date of such alien's departure or removal, [...] is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General (Secretary) that the refusal of admission to such immigrant alien

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

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 field office director found the applicant inadmissible under section 212(a)(9)(B)(i)(I) of the Act, for remaining in the United States after his authorized stay expired on February 22, 2009 until departing in December 2009, and under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by fraud or willful misrepresentation, by telling the immigration inspector who admitted him on March 7, 2010 he planned a temporary visit when he actually intended to immigrate to the United States. The record reflects the applicant was born and raised in [REDACTED] a city on the Mexico-United States border, and had a prior history of travel to the United States using a laser visa issued in 2001.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 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 U.S. citizen spouse and lawful permanent resident parents are all qualifying relatives in this case.<sup>1</sup> 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

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<sup>1</sup> Only the applicant's wife was a qualifying relative when the waiver application was filed in 2011. When the applicant's parents were admitted as immigrants in 2012, they, too, became qualifying relatives.

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 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.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the evidence on the record establishes that the cumulative effect of problems impacting his wife represents hardship that rises to the level of “extreme.” The record shows that his 23-year-old wife was born here and has lived in the United States her entire life, attended public school and college here, and has numerous friends and relatives in the community, including her parents, brother, and extended family members. Further, there is evidence she became pregnant late last year, after fertility problems documented in the record led her and the applicant to undergo in-vitro fertilization at an Albuquerque reproductive clinic. She claims that fear for both her own and for her husband’s safety is causing her unhealthy levels of stress. Official U.S. government reporting regarding violent crime substantiates her concerns about safety in [REDACTED] where she would reside with the applicant in the home his parents left behind when they came to the United States. *See Travel Warning--Mexico*, U.S. Department of State (DOS), January 9, 2014. We note that the DOS advisory warns U.S. citizens about the risks of travel throughout the state of [REDACTED], citing [REDACTED] as particularly dangerous for having one of the highest homicide rates in Mexico.

The applicant also claims that his wife’s health conditions place her at risk due to substandard care in Mexico, *see Country Condition Information—Mexico*, DOS, May 27, 2014, and provides medical records showing a history of heart murmur, immune deficiency, fainting, and shingles. While the applicant’s wife’s U.S. citizenship would enable her to cross the border readily from [REDACTED] to the United States for treatment, we note her concerns about being able to afford the cost of care without insurance. Thus, in addition to depriving the applicant’s wife of contact with relatives and friends in the community, as well as of the means to help support her parents and brother, relocating would sever ties with her doctors and remove access to quality medical care, thereby adding stress to her health concerns. We conclude that the hardship a qualifying relative would experience if she relocated to Mexico to be with her husband goes beyond those hardships ordinarily associated with inadmissibility or exclusion.

Regarding the claim of hardship due to separation, there is evidence showing the emotional or medical difficulties likely to result from the applicant’s departure. Supporting the applicant’s wife’s emotional hardship claim are her own statements and several relatives’ statements reporting that worry about the applicant’s immigration status is causing her high levels of stress. Although medical progress notes document no actual diagnosis or prognosis in this regard,<sup>2</sup> the record reflects the factual basis underlying fears for her husband’s safety abroad -- she reports that a factor in his last U.S. entry was seeing several friends shot at the [REDACTED] nightclub where he and they were socializing. These fears are substantiated both by the *Travel Warning* noted above and by a statement of the applicant’s parents that the shooting episode also spurred them to escape the violence in [REDACTED] by emigrating. We note that the applicant’s parents, in addition to lending credibility to their daughter-in-law’s concerns for her husband’s safety in Mexico, are themselves qualifying relatives who departed [REDACTED] in 2012 and state that the prospect of their son returning to such a dangerous environment frightens them.

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<sup>2</sup> Medical records substantiate that the applicant’s wife has several medical conditions, but there is no indication of ongoing treatment or that she requires her husband to assist in her care.

Regarding financial hardship, too, documentation indicates that the applicant's departure would cause a qualifying relative problems. While a joint 2012 tax return and W-2s show the applicant and his wife had similar incomes, the record reflects that she left a job as a dental assistant due to pregnancy-related health concerns and has no current income. Further, there is evidence that the couple provides financial support to the applicant's parents, who are recent immigrants without economic resources, his wife's parents, whom they claim as dependents for tax purposes, and the applicant's wife's 19-year-old brother, for whom she is paying college tuition. Documentation establishes that the couple's expenses -- including installment payments on their mobile home, lease payments on the property where it is located, utilities, and car costs -- are substantial enough that without either her dental assistant job or the applicant's earnings, she is unlikely to be able to meet her daily living expenses. The record reflects that returning to her dental office employment will provide insufficient income, without her husband's contribution, and that neither her parents nor her in-laws are able to help out. Based on the evidence, we conclude that the applicant's inability to remain here would make his wife unable to meet her financial obligations. In addition, we note that the applicant's income is what allows him and his wife to help support his newly-immigrated parents (as well as his in-laws). These qualifying relatives report the applicant's support is essential to their economic survival, for despite his 55-year-old father's attempt to earn a living repairing tires during the two years since his U.S. arrival, his parents claim they will have difficulty surviving here without their son's financial help.

For all these reasons, the cumulative effect of the emotional and financial hardships a qualifying relative will experience due to the applicant's inadmissibility rise to the level of extreme. We conclude based on the evidence provided that, were his wife and parents to remain in the United States without the applicant due to his inadmissibility, one or more of them 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 his U.S. citizen spouse 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 wife or parents will face if the applicant returns to Mexico, regardless of whether they join the applicant there or remain here; the applicant's home ownership in the United States; history of compliance with the immigration laws prior to the violations for which a waiver is sought; presence of lawfully resident family members; and history of gainful employment; reporting income, and paying taxes. The unfavorable factors in this matter concern the applicant's misrepresentation of his immigrant intent and subsequent overstay of the admission obtained.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 his burden.

**ORDER:** The appeal is sustained