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



**U.S. Citizenship  
and Immigration  
Services**

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[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: **AUG 12 2010**

IN RE:

[REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(a)(6)(C) and 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(6)(C) and 212(a)(9)(B)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office

of the ... ..  
to ... ..  
... ..  
... ..

*Michael J. ...*

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Francisco, California who also denied the applicant's subsequent motion to reopen. The Field Office Director's denial of the motion to reopen is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

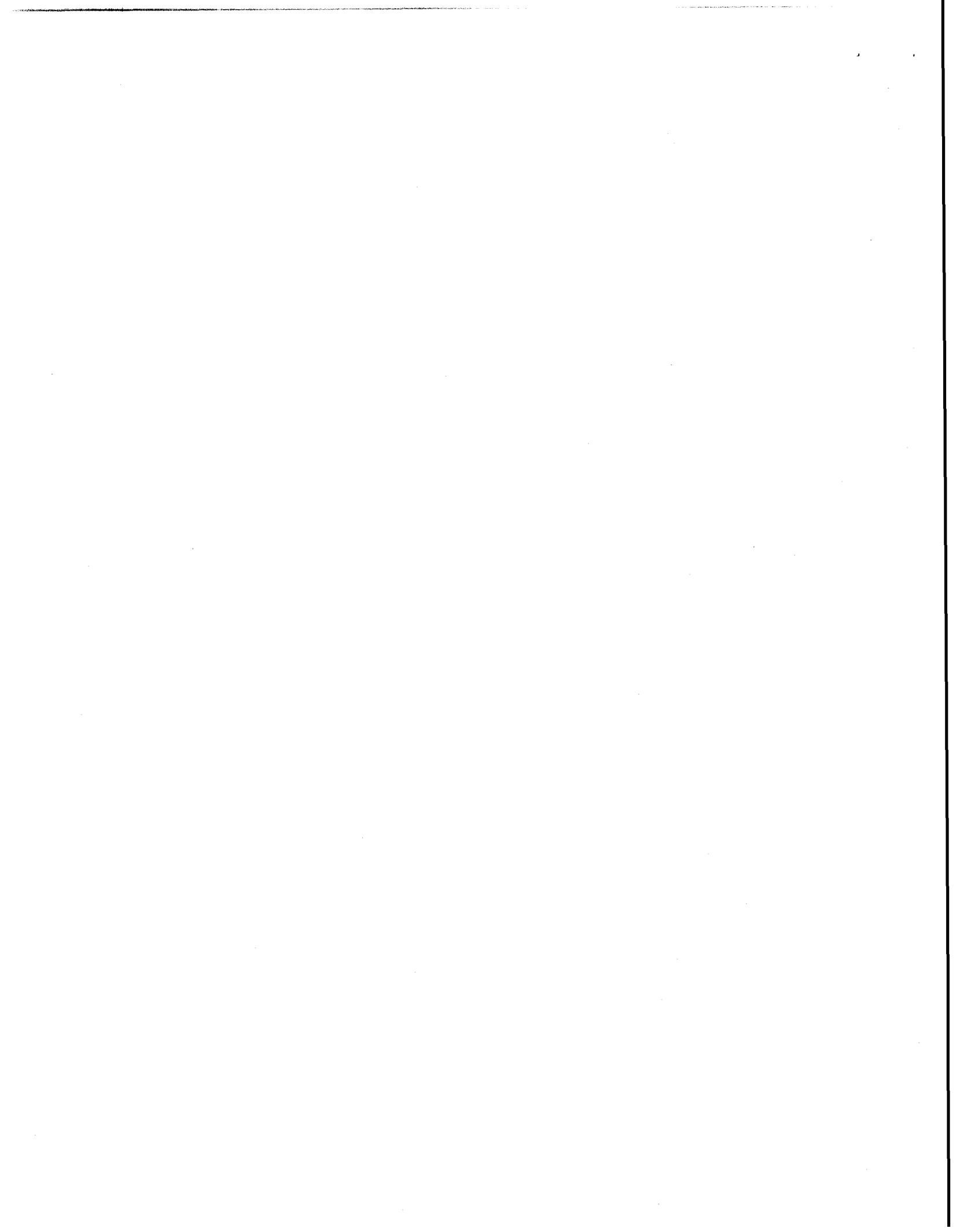
The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained a benefit under the Act through fraud or misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, § 1182(a)(9)(B)(i)(II) for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his last departure. The applicant is married to a U.S. citizen and seeks waivers of his inadmissibilities in order to reside in the United States.

In her January 22, 2010 denial of the Form I-601, Application for Waiver of Grounds of Inadmissibility, the Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative. She denied the applicant's motion to reopen after determining that the record continued to lack sufficient proof of extreme hardship and that no purpose would be served in reopening the waiver application. *Decision of the Field Office Director*, dated March 22, 2010.

On appeal, counsel contends that the applicant did not misrepresent a material fact in seeking admission to the United States and is not inadmissible under section 212(a)(6)(C)(i) of the Act. Alternately, she asserts that the applicant's spouse would suffer extreme hardship if his waiver request is denied. She also contends that the Field Office Director completely disregarded the psychological evaluation of the applicant's spouse and ignored evidence relating to her physical health. Counsel also asserts that the Field Office Director failed to consider the applicant's spouse's fear of religious persecution in Mexico and the financial hardship that she would suffer as a result of the applicant's inadmissibility. *Form I-290B, Notice of Appeal or Motion*, dated March 26, 2010; *Counsel's brief*, filed April 26, 2010.

In support of the waiver, the record includes, but is not limited to, counsel's brief, statements from the applicant, his spouse, and his mother- and father-in-law; a letter of support from the Board of Directors of the applicant's church; medical letters and documentation relating to the applicant's spouse's physical health; a psychological evaluation of the applicant's spouse; earnings statements for the applicant; tax returns for the applicant and his spouse; rent receipts; bank statements for the applicant's father-in-law; telephone bills; auto insurance statements; documentation relating to the applicant's spouse's education; media articles on drug violence in Mexico; and a U.S. Department of State travel warning for Mexico. The entire record was reviewed and considered in reaching a decision in this matter.

The applicant's Form I-601 indicates that he initially entered the United States without inspection in 2001 and remained until December 2006 when he returned to Mexico. The applicant resumed his residence in the United States on February 2, 2007, when he returned as a B-2 nonimmigrant using a Border Crossing Card issued to him on January 5, 2007. Although he departed for Mexico on May



15, 2007, he returned two days later and stayed until October 1, 2007. The applicant again entered the United States a week later and after a [REDACTED] departure, returned on November 18, 2007. The applicant remained until [REDACTED]. When he returned to the United States on [REDACTED] he did not depart until July 6, 2008. On July 27, 2008, the applicant again sought to return to the United States but was denied admission based on a determination by U.S. immigration inspectors that he was not a B-2 visitor, but was living and working in the United States. The record indicates that following his February 2, 2007 and subsequent B-2 admissions, the applicant lived in the home of his spouse's parents and worked without authorization.

The AAO turns first to counsel's claim that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

In her January 22, 2010 decision, the Field Office Director noted that, at his adjustment interview, the applicant had testified that he had indicated he was single when he applied for the Border Crossing Card he used to attempt entry to the United States on July 27, 2008. She further observed that he had also claimed to be unmarried when he was interviewed by a U.S. immigration official on July 28, 2008 regarding this same attempted entry. The Field Office Director found these misrepresentations to bar the applicant's admission to the United States under section 212(a)(6)(C)(i) of the Act. Counsel contends, however, that the applicant's misrepresentations on these occasions were not material and were not made for the purpose of procuring an immigration benefit.

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

- (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.

[REDACTED] found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now United States Citizenship and Immigration Services (USCIS)) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).



The record includes a sworn statement taken from the applicant on July 28, 2008 at the San Francisco port of entry in which he states he is not married. It also contains an October 6, 2009 sworn statement in which the applicant testifies that he indicated he was single when he applied for his Border Crossing Card and when he was questioned by San Francisco immigration inspectors on July 28, 2008. The applicant contends, however, that he misrepresented his marital status only because he and his spouse had not yet informed his father-in-law that they were married, not to obtain admission to the United States.

While the AAO notes the applicant's explanation for his failure to reveal his marriage when he applied for his Border Crossing Card and when he was questioned at the port of entry, it is not sufficient to establish that these misrepresentations were not made to obtain a benefit under the Act. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has testified that he knowingly misrepresented his marital status in seeking a nonimmigrant visa to the United States. In doing so, he shut off a line of inquiry that was relevant to his eligibility for nonimmigrant classification, one that might well have resulted in the denial of his application. At the port of entry, the applicant failed to answer truthfully when he was asked about his marital status, again shutting off a line of inquiry that was directly relevant to his inadmissibility as a nonimmigrant. The AAO, therefore, finds the applicant's misrepresentation of his marital status to a consular officer in Mexico City in obtaining a visa and to an immigration inspector at the San Francisco port of entry in seeking admission to the United States to be material misrepresentations, willfully made to obtain admission to the United States. It further finds that the applicant's procurement and use of a Border Crossing Card, a nonimmigrant entry document, to enter the United States when it was his intention to reside and work in the United States also constitutes misrepresentation under section 212(a)(6)(C)(i) of the Act. For both these reasons, the AAO finds the record to demonstrate that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and must seek a waiver of inadmissibility under section 212 (i), which states:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 applicant is also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, as indicated by the Field Office Director in her initial January 22, 2010 decision. Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-



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

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

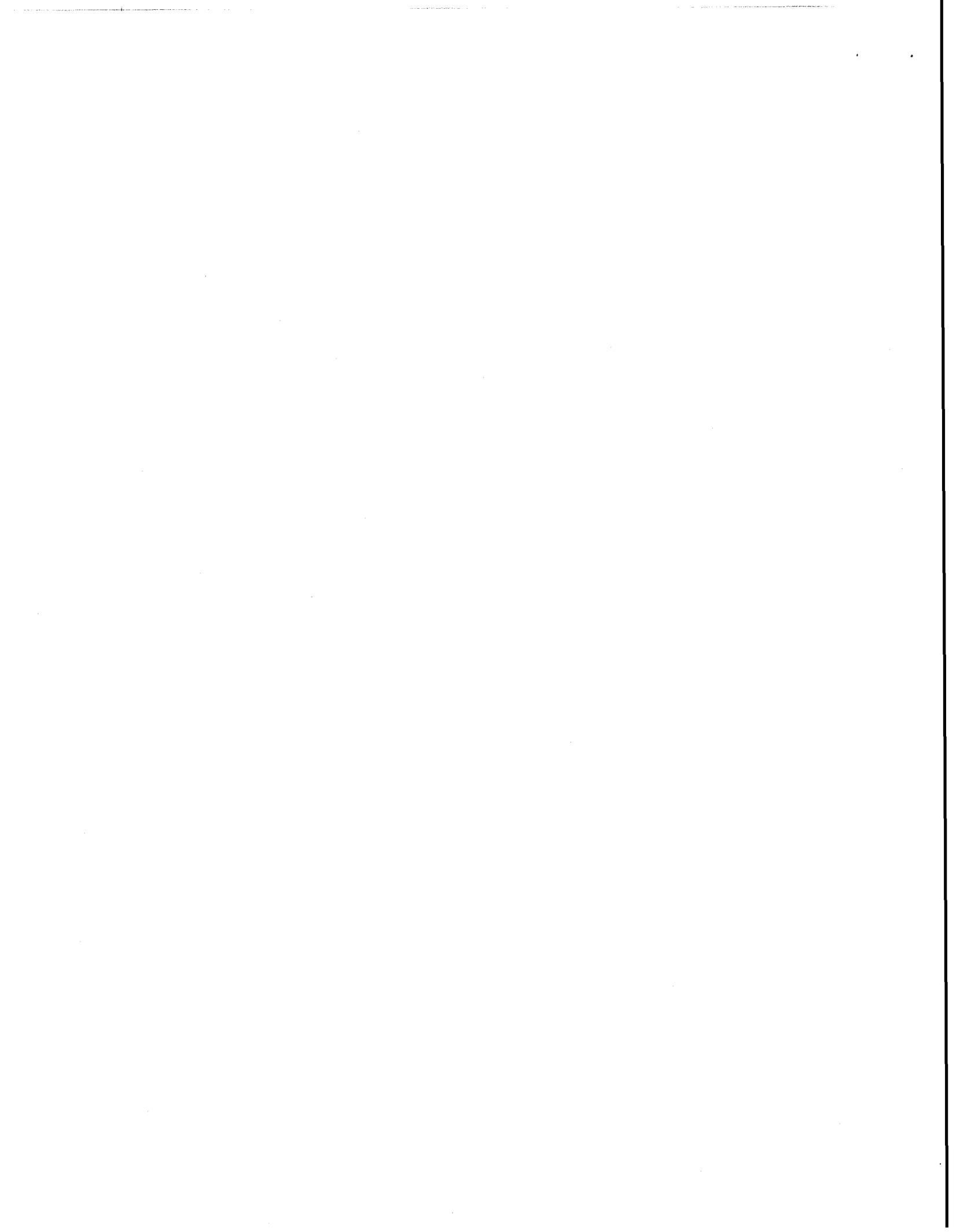
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(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted 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.

As previously indicated, the applicant's Form I-601 indicates that he entered the United States without inspection in April 2001 and remained until December 2006. Accordingly, the applicant accrued unlawful presence from the date he entered the United States in April 2001 until his departure in December 2006. As he accrued unlawful presence in excess of one year and is seeking immigrant admission within ten years of his last departure from the United States, which occurred on July 6, 2008, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Waivers of the bars to admission resulting from violations of section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bars would result in extreme hardship for the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship an applicant or other family members would experience is not directly relevant to a determination of eligibility for a waiver under section 212(a)(9)(B)(v) or section 212(i) of the Act. The only relevant hardship in the present case is the hardship that would be suffered by the applicant's spouse if the applicant's waiver application is denied. Hardship experienced by nonqualifying relatives will be considered only to the extent that it affects the applicant's spouse. If 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

In determining extreme hardship, the AAO considers hardship to a qualifying relative in both the country of relocation and the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

To establish that the applicant's spouse would experience extreme hardship upon relocation, counsel asserts that the applicant's spouse has been diagnosed with a cardiac condition and that a cardiologist who examined her has found that it would be disruptive to her health and the continuity of her healthcare if she were to relocate to Mexico. Counsel also asserts that the applicant's spouse has been diagnosed as suffering from Major Depressive Disorder, Generalized Anxiety Disorder and Panic Disorder, which are so severe that they are contributing to her cardiac symptoms. Counsel further contends that the applicant's spouse would face religious persecution if she moved to Mexico. Counsel states that the applicant and his spouse practice the same faith and it is likely that she would be targeted by the same gangs who previously threatened the applicant. She also reports that the applicant's spouse is close to completing a degree in nursing but would not be able to do so in Mexico. Counsel states that the applicant's spouse would have to start over with her schooling and that it is unlikely that she would be able to complete the rigors of nursing school in a different language. Counsel also contends that relocation would result in extreme hardship for the applicant's spouse because her only family ties are in the United States and she is very attached to her father. The applicant's spouse, counsel states, has never lived outside her father's house.

In an undated statement, the applicant's spouse asserts that her health conditions cause her stress and would result in extreme hardship for her if she were to move to Mexico. In Mexico, the applicant's spouse states, she would not have the financial resources necessary to obtain adequate medical care. She also indicates that she has confidence in the care she receives from her current healthcare providers and does not want to lose these relationships. The applicant's spouse further states that it would be extremely hard for her to live in a place where her religious beliefs were not respected and that the applicant has told her that he and his family were attacked by a gang because of their religious beliefs. The applicant's spouse also voices her concerns about her general safety if she relocated to Mexico, stating that there are several cities in Mexico that are not advisable to visit, including Mexico City and its outer suburbs, and that living under such dangerous conditions would threaten her mental and physical health. The applicant's spouse states that being away from her family would torment her and that it would throw her into a deeper state of depression if she were unable to care for her parents now that they are much older and becoming ill. The applicant's spouse also states she wishes to fulfill her dream of being a mother and that, if she moved to Mexico, she would not have the same quality of prenatal care, her future children would not have the same education and opportunities as in the United States, and they would not grow up in a safe environment.



The record contains medical test results for the applicant's spouse, including the results of an EKG, which the AAO does not have the expertise to interpret. The applicant has also submitted copies of handwritten notes and reports from various medical personnel, some of which are illegible, that cannot be reliably read by nonmedical personnel. The record does, however, contain statements from two medical practitioners. [REDACTED] a Family Nurse Practitioner, is dated December 3, 2009 and states that the applicant's spouse is "in the middle of a work-up for a cardiac condition" and other health concerns. [REDACTED] further states that relocation would be disruptive to the applicant's spouse's health and the continuity of her health care. The second statement, dated February 9, 2011, is issued by cardiologist [REDACTED] who reports that he performed a complete history and physical examination of the applicant's spouse and reviewed her medical records. [REDACTED] states that he believes the applicant's spouse's anxiety is being caused by her chest discomfort, which is due to costochondritis and heart palpitations. [REDACTED] also states that relocation to Mexico would be disruptive to the applicant's spouse's health, and would result in greater anxiety, increase her supraventricular and ventricular ectopy and aggravate her paroxysmal supraventricular tachycardia.

The record also includes a psychological evaluation of the applicant's spouse conducted by psychotherapist [REDACTED]. [REDACTED] states that she also administered the [REDACTED] inventory to the applicant's spouse and that the results of these tests were consistent with her clinical interview. [REDACTED] finds the symptoms for which the applicant's spouse has sought medical treatment, including palpitations, accelerated heart rate, chest pain, shortness of breath, and the results of her [REDACTED] Anxiety Inventory to indicate that her symptoms are anxiety based and the result of panic attacks. Based on her examination of the applicant's spouse and the results of the two psychological tests she administered, [REDACTED] concludes that the applicant's spouse is suffering from a [REDACTED] Generalized [REDACTED] and Panic Attacks, brought on by the applicant's detention and arrest following his attempted entry on July 27, 2008. [REDACTED] also indicates that she has advised the applicant's spouse that antidepressant medications might be helpful in alleviating her symptoms, as well as a course of psychotherapy. [REDACTED] states that if the applicant's spouse were to relocate with the applicant she would suffer psychologically from the loss of her home, family and church community.

Having reviewed the record before it, the AAO finds it to establish that relocation to Mexico would result in extreme hardship for the applicant's spouse. While the record does not support all of the hardship claims made by the applicant, it does document that the applicant's spouse is experiencing health problems, emotional and physical, that appear interrelated. Whether it is the applicant's spouse's cardiac conditions that are creating her anxiety, as indicated by her cardiologist, or her anxiety that is creating her cardiac abnormalities, as concluded by the psychotherapist who evaluated her, the AAO notes that both indicate that her anxiety levels and related cardiac symptoms would increase upon relocation. When these health concerns are added to the normal disruptions and difficulties created by relocation, the AAO finds the applicant to have demonstrated extreme hardship to his spouse upon relocation.



The AAO also finds the record to demonstrate that the applicant's spouse would experience extreme hardship if she continues to reside in the United States without him. On appeal, counsel contends that, in the applicant's absence, his spouse will be unable to complete her nursing degree because of her family's current financial situation. She reports that the applicant's father-in-law is no longer able to support his family financially as a result of the current economy's impact on his construction business. The applicant's income, counsel asserts, is now essential to the entire family and allows them to remain in their home. Counsel also notes that without the applicant, his spouse, who has health problems, will not improve sufficiently to have the child they both want and that their physical separation will also make it much less likely that they will be able to conceive a child.

The applicant's spouse states that she began experiencing a rapid and irregular heartbeat, along with chest pains, shortness of breath, weakness, light-headedness and numbness after the applicant was detained on July 27, 2008. She also reports that she has been diagnosed with Major Depressive [REDACTED] Anxiety Disorder and Panic Disorder. The applicant's spouse states that, if the applicant were returned to Mexico, she would suffer enormously and that he has been a support for her in dealing with her health problems. She states that she fears that she would have a nervous breakdown in his absence. The applicant's spouse also indicates that she is terrified that the applicant would be mistreated and face discrimination in Mexico based on his religious beliefs. She contends that, without the applicant's financial assistance, her parents would not be able to keep up with their house payments.

The record includes a letter from the applicant's father-in-law in which he states that his family is in a financial crisis and that he has been unable to work for over two years. His only income, he reports, is his retirement from Social Security and that it barely covers his most important bills. He states that the applicant helps him pay his mortgage. The record contains rent receipts, which indicate that the applicant is [REDACTED] in rent each month. It does not, however, include documentary evidence, e.g., tax returns, billing statements and receipts, to establish the income of the applicant's father-in-law or document his expenses, including the amount of his monthly mortgage payment. The record also fails to demonstrate that the applicant, who has stated he co-owns a pharmacy in Mexico, would be unable to assist his father-in-law financially from outside the United States.

Having reviewed the evidence of record, the AAO has again taken note of the applicant's spouse's current health problems, as discussed in the statements by [REDACTED] and [REDACTED]. It concludes, that, when considered in the aggregate, the impact of separation on the applicant's spouse's health and the hardships routinely created by the removal of a spouse would result in extreme hardship for the applicant's spouse if his waiver application is denied and she remains in the United States.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative under sections 212(a)(9)(B)(v) and 212(i) of the Act, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

301 (BIA 1996). The AAO must then, "[B]alance 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 adverse factors in the present case are the applicant's unlawful presence and misrepresentations for which he now seeks waivers, and his unauthorized employment in the United States. The favorable or mitigating factors are the applicant's U.S. citizen spouse, the extreme hardship to his spouse if his waiver application is denied, the absence of a criminal record and his volunteer activities in support of his church, as documented in the record. The AAO finds that, although the immigration violations committed by the applicant were 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 discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.

