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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

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U.S. Citizenship  
and Immigration  
Services



H6

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ)

Date: **SEP 16 2010**

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

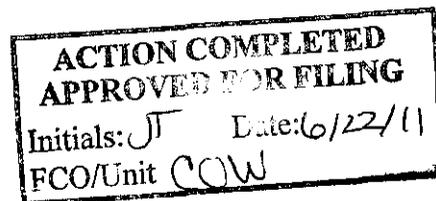
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office



**DISCUSSION:** The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the acting district director for continued processing.

The record establishes that the applicant, a native and citizen of Mexico, was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigration benefit, specifically, immigrant visa approval, by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 25, 2008.

In support of the appeal, the applicant's spouse submits the following: a statement, dated July 23, 2008; financial documentation; support letters; and medical documentation. The entire record was reviewed and considered in rendering this decision.

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

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.

....

(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) 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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) 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.

Regarding the acting district director's finding of inadmissibility under section 212(a)(9)(B)(II) of the Act, for unlawful presence, the record indicates that the applicant entered the United States without authorization in April 2005 and did not depart the United States until January 2007. The acting district director correctly found the applicant to be inadmissible to the United States under section 212(a)(9)(B)(II) of the Act, for unlawful presence for more than one year. On appeal, the applicant does not contest this finding of inadmissibility.

Regarding the acting district director's finding that the applicant is also inadmissible under 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant failed to disclose his previous unlawful entry to the United States and unlawful presence while in the United States, as outlined above, when he appeared for an immigrant visa on March 22, 2007. The acting district director correctly found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for attempting to procure an immigration benefit, specifically, immigrant visa approval, by fraud or willful misrepresentation.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 or

his spouse's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant's U.S. citizen spouse contends that she will suffer emotional, physical and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that the applicant's physical presence is vital to her as a wife and mother as she relies on him for day to day assistance and companionship. She further notes that her children have a very close relationship to the applicant and were he to reside abroad, they would suffer. Moreover, the applicant's spouse contends that she suffers from numerous medical conditions, including diabetes, problems with her eyes as a result of her diabetes which oftentimes prohibit her from driving, and hypertension, and without her spouse's daily presence, she will suffer hardship. Finally, the applicant's spouse notes that she works but her take-home pay is not enough to cover the family's expenses and without the applicant's income, she may become a welfare mom as she will be unable to pay all her bills. *Letter from* [REDACTED] dated July 23, 2008.

In support, a letter has been provided from the applicant's spouse's treating physician, [REDACTED] confirming that the applicant's spouse is suffering from diabetes mellitus that has been difficult to control and significant hypertension and is in need of assistance from the applicant to help manage her affairs and help with her treatment and medical management. *Letter from* [REDACTED] dated July 3, 2008. In addition, a letter has been provided from the applicant's spouse's ophthalmologist, [REDACTED]. [REDACTED] notes that the applicant's spouse has been diagnosed with glaucoma suspects with borderline intraocular pressures, is taking two forms of medication in both eyes, and needs continued follow-up treatment to treat her condition. *Letter from* [REDACTED] dated July 10, 2008.

Further, letters have been provided from the applicant's spouse's adult children confirming that they are unable to properly assist their mother, and further establishing the critical role the applicant play in his wife's and step-children's lives. *Letter from* [REDACTED] dated July 21, 2008 and *Letter from* [REDACTED] dated July 21, 2008. Moreover, documentation has been provided establishing the applicant's spouse's need to turn to her church for financial support due to her spouse's absence. *Letter from* [REDACTED] [REDACTED] dated July 14, 2008. Finally, evidence has been submitted establishing the applicant's past financial contributions to the household. *See Form G-325A for* [REDACTED] dated April 9, 2007 and *Letter from* [REDACTED] dated March 27, 2007.

The record reflects that the cumulative effect of the emotional, physical and financial hardship the applicant's spouse would experience due to the applicant's inadmissibly rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's spouse asserts that she does not want to relocate to Mexico as her children will suffer in a foreign country, thereby causing her emotional hardship. She further notes that she would suffer physical hardship were she to relocate abroad, as she would not be able to receive appropriate and affordable medical treatment by professionals familiar with her numerous conditions. Moreover, the applicant's spouse asserts that she will be unable to obtain gainful employment to maintain her standard of living, and she and her children will be at risk of getting sick due to the unsanitary conditions in Mexico. *Supra* at 2-4.

The record establishes that the applicant's spouse has strong community, employment and family ties, including two adult children, a parent and a grand-child. In addition, the AAO notes the applicant's spouse's medical conditions and the need for her to receive continued treatment and care by medical professionals familiar with her diagnosis. Finally, the U.S. Department of State has issued a travel warning, advising U.S. citizens and lawful permanent residents of the high rates of crime and violence in Mexico. *Travel Warning-Mexico, U.S. Department of State*, dated August 27, 2010. Based on a totality of the circumstances, the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. 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 hardship the applicant's U.S. citizen spouse and her children would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or stayed in the United States, community ties, the applicant's apparent lack of a criminal record, gainful employment, support letters, the passage of more than three years since the applicant's fraud or willful misrepresentation and the passage of more than five years since the applicant's unlawful entry to the United States. The unfavorable factors in this matter are the applicant's fraud or misrepresentation when attempting to procure an immigration visa, unauthorized entry to the United States, and unlawful presence and unlawful employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act,

8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.<sup>1</sup>

**ORDER:** The appeal is sustained. The waiver application is approved.

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<sup>1</sup> During the review of the instant appeal, the AAO discovered that the applicant had more than one A file. Upon receipt of the second A file (A97 672 361), the AAO discovered a number of discrepancies with respect to the applicant's U.S. entries and departures. To begin, on the Form I-130, the applicant's spouse noted that the applicant had entered the United States as a visitor in January 2002. *See Form I-130*, dated March 13, 2004. Moreover, on the Form G-325A, Biographic Information (Form G-325A), the applicant noted that that he had resided in Texas from January 2001 until the present, in 2004. *See Form G-325, Biographic Information*, dated March 13, 2004. Furthermore, the AAO notes that the applicant and his spouse were married in Texas on February 9, 2003. *State of Texas, County of Bosque, Marriage License*, dated February 11, 2003. Finally, the letter in support provided by [REDACTED] contends that the applicant became an active member of the church in 2001 and was deported in 2003. *Letter from [REDACTED]* dated July 14, 2008.

Section 212(a)(9) of the Act states in pertinent part:

....  
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).

Based on the above-referenced documents, the discrepancies in the dates of the applicant's entries and departures, and the possibility that the applicant may be inadmissible to the United States under section 212(a)(9)(C)(i) of the Act, the AAO strongly suggests that the applicant be interviewed in detail regarding his entries and departures prior to the issuance of an immigrant visa.