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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 24 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Detroit, Michigan, Field Office (the director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, 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 sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 212(a)(6)(C)(i), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the country; and for procuring admission into the United States by willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, who filed a Form I-130, Petition for Alien Relative, on his behalf that was approved in April 2014. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 212(i), in order to reside in the United States with his spouse.[1]

The director concluded that the applicant did not establish that extreme hardship would be imposed on his spouse if she remained in the United States or if she moved with him to Mexico. The director denied the application accordingly. *Decision of Director,* dated August 29, 2014.

On appeal the applicant asserts, through counsel, that the director did not consider all of the evidence in the aggregate; that the director minimized medical evidence, misstated financial evidence, and did not consider family separation hardship; and that the director applied the wrong standard of evidence and failed to follow precedential case law in his case.

The record includes, but is not limited to, statements and affidavits from the applicant, his wife, family members, friends, and professional colleagues; medical documentation; photographs; country-conditions information for Mexico; employment and financial documents; and documentation pertaining to identity and relationships. The applicant also submits untranslated documents in Spanish, and a copy of a non-precedent AAO decision. Spanish-language documents that are not accompanied by certified English translations cannot be considered in the applicant's case. *See* 8 C.F.R. § 103.2(b)(3). In addition, unpublished AAO decisions are not binding on this office, as they have not been designated as precedents. *See* 8 C.F.R. § 103.3(c). The entire remaining record was reviewed and considered in arriving at a decision on the appeal.

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

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

[1] The cover page of the director's decision indicates that the applicant's waiver application was filed pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The error is harmless, as the content of the director's decision does not refer to or apply section 212(h) of the Act, and the director analyzes the applicant's inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, applying the appropriate waiver provisions.

> (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.
>
> . . . .
>
> (iii) Exceptions.-
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> (I) Minors.- No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

Section 212(a)(9)(B)(v) of the Act states:

> Waiver.-The Attorney General [now Secretary, Department 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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

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

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

> (1) 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 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 resident spouse or parent of such an alien.

The record reflects that the applicant entered the United States without inspection or admission on an unknown date in 1998, when he was years old, and he remained unlawfully in the United States until around December 2005. Because section 212(a)(9)(B)(iii) of the Act provides an exception for minors, the applicant accrued unlawful presence in the United States only after becoming years old, on until his departure in December 2005. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for over a year. The applicant does not contest this finding of inadmissibility, and he seeks a waiver of the inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

The record also corroborates the applicant's claims that he obtained more than one type of nonimmigrant visa (NIV) between 2007 and 2011. The applicant submits evidence showing that he was admitted into the United States as a B-1 visitor on May 6, 2007 and on August 6, 2007. He was also admitted into the country as an L-1 intracompany transferee on March 18, 2008, and he was admitted with an H-1B specialty occupation visa on January 8, 2011 and August 19, 2012. The applicant affirmatively states that he believes he did not reveal his prior unlawful presence in the United States on his NIV applications. He thereby shut off a line of inquiry relevant to his eligibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact. The applicant seeks a waiver of this inadmissibility pursuant to section 212(i) of the Act.

The applicant's U.S. citizen spouse is his qualifying relative for the waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once 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-Moralez,* 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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 1292, 1293 (9th Cir. 1998) (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.

On appeal, the applicant asserts that evidence in the record demonstrates that his spouse would experience extreme financial, physical and emotional hardship if he is denied admission into the United States and she either relocates with him to Mexico or she remains separated from him in the United States. To support his assertions, the applicant submits affidavits and statements, financial and medical evidence, career-related evidence for his wife, and country-conditions information about Mexico.

The applicant and his wife indicate in their statements dated December 20, 2013, that his wife has "severe medical problems that require monitoring" by her physicians, she has required surgeries in the past, and she relies on the applicant's health insurance to cover her medical care and costs. The applicant's wife indicates that some of her medical symptoms are aggravated by stress and anxiety, and she states that her symptoms have increased recently at the prospect of a separation from the applicant. The applicant believes that her health conditions could be affected if she could not benefit from his healthcare coverage. He indicates that his wife's conditions are aggravated when she experiences stress, and he believes emotional stress related to separation would affect her ability to function on a daily basis. The applicant also states that financial and emotional stress and living separately would affect the couple's ability to plan for a family.

The applicant's wife's sister states, in a December 13, 2013 affidavit, that the applicant's wife would experience stress if she lived separately from the applicant and that the applicant's wife's desire to have children would be complicated by stress and separation from the applicant. The applicant's wife's mother and father also indicate, in affidavits, that the applicant's wife suffers from chronic medical problems, that her medical conditions are exacerbated by stress, and that the applicant provides his wife with quality medical insurance.

The record includes evidence that the applicant's wife is a dependent under the applicant's medical insurance policy. Evidence also reflects that the health policy the applicant's wife had before they married was discontinued. A medical letter dated December 19, 2013, reflects that the applicant's wife "suffers from several conditions, including irritable bowel syndrome, diarrhea, nausea and abdominal cramps"; that the applicant's wife's symptoms are related to and aggravated by stress; and that the applicant's wife's "condition is chronic and despite treatment, she will relapse on and off for the rest of her life." Medical evidence in the record also reflects that in 2007, the applicant's wife underwent a surgical excision procedure to treat moderate to severe dysplasia, which is considered a "pre-cancerous" change; and a December 13, 2013 medical letter reflects that the applicant's wife's medical procedure "has been associated with an increased risk of future pregnancy problems." The applicant's spouse and mother also refer to inherited health issues that could adversely affect plans to have a family.

In addition to medical hardship, the applicant states in his December 20, 2013, statement that his wife would experience financial hardship if he is removed from the country. He states that he is the primary financial provider in their family and that his wife relies on him to pay their rent, bills and basic necessities, and to help her pay her student loan payments. The applicant's wife states further, in her December 2013 statement, that she works as a server in a restaurant, does not earn enough money to support herself financially, and relies on the applicant to pay their rent, bills and to help her to pay over $100,000 in student loans and other debt. In addition, the applicant's wife's father indicates in his affidavit that the applicant supports his wife financially, and that the applicant's financial support allows the applicant's wife to gain experience in her field of study, historical preservation. The applicant's wife's mother also indicates that the applicant supports his wife financially, and that without his financial support it could take the applicant's wife more than 30 years to repay her loans.

Financial evidence, including federal income tax returns and employment records, reflects that the applicant's wife works as a restaurant manager and server earning $5.00 per hour as a manager and $2.65 per hour as a server, without taking gratuities into account. The record also contains documentation corroborating claims about the applicant's wife's student loans, and a copy of the couple's apartment lease. Credit card and bank statements reflect outstanding balances. The record also includes collection notices and automobile insurance bills. In addition, the record contains three budgets prepared by the applicant projecting the couple's income and expenditures in three distinct scenarios: the applicant remains in the United States with his wife, the applicant moves to Mexico and his wife remains in the United States, and the applicant and his wife move to Mexico together.

The applicant indicates in his statement that his wife's ability to build a career in the field of historic preservation would also be diminished if she had to work more hours at her current workplace or had to take on a second job. The applicant's wife asserts further, in her December 20, 2013 statement, that she has a degree in historic preservation, few positions in her field exist, and because the applicant supports her financially and morally, she is able to gain experience in her field part-time. The applicant's wife's work associates express, in letters, that the applicant's wife is respected and known in the field of historic preservation in Michigan and the record includes evidence of some of her earnings as a consultant.

Addressing the hardship his spouse would experience upon relocation, the applicant indicates in his December 20, 2013 statement, that he is from an area outside of Mexico that has become violent and dangerous. He states that the small house he owns in Mexico is "far away from reliable transportation." He states further that his mother, who lives in the house with two of his siblings, informed him that in the past year "the house was broken into" and that she had metal bars installed on all the windows. The applicant indicates that he is concerned for his wife's safety in Mexico, given the violence and recent break-ins in his neighborhood. In addition, he states that he is concerned that his wife will stand out as an American foreigner and will "become a target of criminals." Also, the applicant indicates that his wife does not speak Spanish and would be alone and unable to communicate in Mexico.

In her statement dated December 20, 2013, the applicant's wife also expresses concern about dangerous conditions and her safety in Mexico. Similarly, the applicant's wife's father and step-father express safety concerns for the applicant's wife in Mexico. In addition, the record contains news articles reflecting that severe and increasing drug cartel-related violence exists in and around Mexico, where the applicant and his wife would live.

The applicant indicates further that his wife would lose medical relationships with her doctors in the United States if she moved to Mexico, and that his wife would be unable to communicate with medical professionals in Mexico. The applicant's wife states further, in her December 20, 2013 statement, that she would not have the same level of healthcare and health coverage in Mexico for her medical conditions. She also states that she fears the possibility of complications if she became pregnant in Mexico. The applicant's wife's sister also expresses concern, in her December 13, 2013 affidavit, that the applicant's wife's medical conditions would be aggravated

in Mexico due to stress. Similarly, the applicant's wife's step-father expresses concern about physical hardship that the applicant's wife would suffer in Mexico due to her health conditions.

The applicant states that an additional relocation concern relates to professional hardship that his wife would experience if she relocated to Mexico, in that she has built a reputation and career network in her field in Michigan, and she would be unable to work in her field of expertise in Mexico because she does not speak Spanish and has no knowledge about Mexican historic preservation issues. The applicant's wife states similarly in her December 20, 2013, statement that her career in historic preservation would end if she moved to Mexico. Further, the applicant's wife's work associates express, in letters, that it would be difficult for the applicant's wife to find work in her field in Mexico.

Lastly, the applicant states that his wife would also experience emotional hardship due to separation from her family if she relocated with him to Mexico. He indicates that his wife has never lived outside of the United States, that she is very close to her sister, nephews, parents and step-parents; and that due to financial circumstances she and her family would be unable to visit often. The applicant's father-in-law also indicates that their family is close, they have no family in Mexico, that it would be financially difficult to visit the applicant and his wife in Mexico, and that the applicant's wife would experience emotional hardship due to her separation from her family. Similarly, the applicant's wife's mother and step-father indicate in their December 12, 2013, affidavits that they would be unable to visit the applicant and his wife in Mexico, because her step-father has medical problems and is unable to travel.

The record contains evidence of physical, financial, professional, emotional, and cultural hardship the applicant's wife would experience if she remained in the United States separated from the applicant, and if she relocated with him to Mexico. Considering the unique factors of this case cumulatively, the record establishes that the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

Matter of Marin, 16 I&N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)
> . . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The unfavorable factors in this matter are the applicant's accrual of unlawful presence between March 25, 1999 until December 2005 and his misrepresentation of his immigration history for

nonimmigrant visa purposes. The favorable factors are the extreme hardship the applicant's U.S. citizen wife would experience if the applicant is denied admission into the United States, the applicant's lengthy residence and stable employment history in this country, evidence attesting to the applicant's good character, and his lack of a criminal record. Upon review, we find that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the applicant has established extreme hardship to his U.S. citizen spouse as required under 212(a)(9)(B)(v) and sections 212(i) of the Act. The applicant also has established that he merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for waivers of his inadmissibilities pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act. The Form I-601 appeal will therefore be sustained.

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.