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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



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Date: APR 30 2012

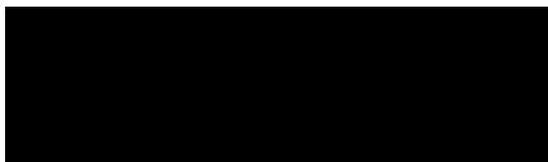
Office: CHICAGO, IL

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IN RE: 

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

ON BEHALF OF APPLICANT:



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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of possession of less than 30 grams of marijuana. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen mother, son, and lawful permanent resident father.

In a decision, dated June 11, 2009, the field office director found that the applicant had been arrested for possession of 2.5 to 10 grams of marijuana with no final disposition for the case. He then concluded that the applicant was inadmissible and did not qualify for a waiver as she did not establish that her qualifying relatives would suffer extreme hardship as a result of her inadmissibility. The waiver application was denied accordingly.

On appeal, counsel asserts that the applicant's only conviction, occurring on January 9, 2007, is for possession of 2.5 to 10 grams of marijuana and that all other criminal charges related to this arrest and other arrests have been dismissed. Counsel states further that the field office director erred in finding that the applicant had failed to establish extreme hardship to a qualifying relative, specifically referring to the field office director's failure to consider extreme hardship to the applicant's son and the psychological evaluation conducted on the applicant's family.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
  - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

The record indicates that the applicant has two arrests for possession of marijuana in the amount of 2.5 to 10 grams. On June 15, 2006, the applicant was arrested and charged with Cannabis Possession of 2.5 to 10 grams under 720 ILCS 550/4-B and on January 9, 2007 she was convicted of this charge. On November 26, 2006, the applicant was arrested again and charged with Cannabis Possession of 2.5 to 10 grams under 720 ILCS 550/4-A, but this charge was dismissed. Thus, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of one count of possession of less than 30 grams of marijuana.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

A waiver of inadmissibility under section 212(h) 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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother, father, and son are the qualifying relatives 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-Moralez*, 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 alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In support of the waiver application, the record includes: a psychological evaluation; affidavits from the applicant, the applicant’s mother, the applicant’s father, and the father of the applicant’s son; medical records for the applicant’s grandmother; copy of the applicant’s sister’s medical and educational records; and numerous records concerning country conditions in Mexico.

The applicant and her family are claiming that her inadmissibility will cause extreme emotional hardship to her son and extreme emotional and financial hardship to her father and mother. The applicant claims and the record indicates that the applicant is the primary caretaker for her son, whose father is only able to see him one day per week; her grandmother, who has chronic kidney disease; and her sister, who suffers from Major Depression Disorder and Attention Deficit Disorder combined with Hyperactive Disorder and Anxiety Disorder. The record reflects that the applicant’s sister’s disorder is so severe that she is on a reduced school schedule, takes medications, and attends weekly psychological and psychiatric therapy sessions. The AAO notes that at the time the applicant’s appeal was filed, her sister was 17 years old. The record also reflects that the applicant cares for her grandmother’s daily needs. The applicant’s father and mother claim that because of their work requirements and other financial obligations if the applicant were to be removed from the United States they would suffer extreme hardship because they would not be able to afford the childcare for their other daughter and a nurse for the applicant’s grandmother. Through affidavits and financial documentation, the record supports these claims.

The record also reflects that the applicant entered the United States with her parents at the age of three years old and that the applicant and her family have been continuously residing in the United States for almost twenty years. The record reflects that all of her immediate family lives in the United States.

The AAO finds that the applicant's son would suffer extreme hardship as a result of being separated from his mother because there is no clear primary caretaker for the child in his mother's absence. The record indicates that the applicant's other family members would not be able to care for her son and that the father of the son would also not be able to care for the child. The AAO finds that the applicant's mother and father would suffer extreme emotional and financial hardship as a result of being separated from the applicant because they would lose the applicant's support in helping to care for her grandmother and sister.

Moreover, the AAO finds that it would be extreme hardship for the applicant's son, mother, and/or father to relocate to Mexico. After residing in the United States for twenty years the applicant's mother and father have strong family ties to the United States. The record indicates that the applicant's parents would not be able to leave the United States without their other daughter and the applicant's grandmother, both of whom suffer from chronic medical conditions that require care on a regular basis. In regards to the applicant's son's relocation, the AAO finds that this too would be an extreme hardship. The applicant would relocate to Mexico with no family ties or support and with very little work experience and/or education to find employment in order to support herself and her child. The AAO finds that the applicant has established that her qualifying relatives would suffer extreme hardship as a result of her inadmissibility.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-Moralez*, 21 I&N Dec. 296, 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 factor in the present case is the applicant’s 2006 criminal record of two arrests for criminal possession of marijuana and one arrest for trespassing. However, the record reflects that the applicant was only 18 years old at the time of these arrests and has since had a clear criminal record, completed her high school degree, enrolled in college and had a child. She plays an integral part in supporting her family through the care she provides for her sister and grandmother. Other favorable factors in the present case are the extreme hardship to the applicant’s family if she were to be found inadmissible and the applicant’s lengthy residence in the United States.

The AAO finds that the crime committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.