



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 11 2013** OFFICE: LOS ANGELES

File: [REDACTED]

IN RE: [REDACTED]

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:

SELF-REPRESENTED¹

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

¹ It is noted that the attorney of record in the present matter, Rufino Marc Cardoso, has been indefinitely suspended from practicing immigration law. See Executive Office for Immigration Review, List of Currently Disciplined Practitioners at <http://www.justice.gov/eoir/discipline.htm>

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen. The motion will be granted and the underlying application will be approved.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing crimes involving moral turpitude and pursuant to section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for engaging in prostitution. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse and four U.S. citizen children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 10, 2008. On appeal, the AAO concluded that the applicant's daughters would suffer extreme hardship based on relocation but not separation and dismissed the appeal accordingly. *See Decision of the Administrative Appeals Office*, dated November 9, 2011.

In response, counsel asserts that the decision by the AAO was incorrect and needs to be amended in light of more evidence of extreme hardship to the applicant's qualifying relatives. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B) and counsel's brief, received December 12, 2011.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel refers to and submits a psychological assessment of the applicant's spouse, letters from the applicant's children, and financial documents that were not previously available. Counsel contends that if a waiver is not granted, the applicant's lawful permanent resident spouse and U.S. citizen children will suffer extreme hardship of an emotional, psychological, physical, medical, economic and familial nature. The AAO finds that because the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2), the motion will be granted and the application reopened.

The record has been supplemented on motion with: Form I-290B and counsel's brief; a new affidavit by the applicant's wife; a psychological assessment of the applicant's wife; letters from the applicant's children; financial documentation relating to the family's home; income and expenses; and medical documentation for the applicant's daughter. The entire record was reviewed in rendering a decision on motion.

Section 212(a)(2)(A) of the Act provides:

- (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.

On June 18, 1996, the applicant was convicted of theft of property under California Penal Code section 484(a) and was sentenced to three years of probation, one day in jail and various monetary penalties. On April 29, 2004, the applicant was convicted of petty theft with prior jail term under California Penal Code section 666 and was sentenced to three years of probation and ordered to pay \$210 in restitution. Applicant's crimes are considered crimes of moral turpitude, as discussed in the AAO's decision dated November 9, 2011. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973); see also *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009). He is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his [her] discretion, waive the application of subparagraph (A)(i)(I), (B) . . . of subsection (a)(2) . . . if—

- (1) (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(a)(2)(A)(i)(I) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, 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. In the present case, the applicant's spouse and children are qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful

permanent resident or U.S. 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).

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 v. I.N.S.*, 138 F.3d 1292 (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.

The applicant's 42-year-old spouse is a native of Mexico and has been a lawful permanent resident of the United States since 2000. She married the applicant in December 2000 and has never lived apart from him. She states that in addition to suffering from nervousness, sleeplessness, and stress caused by her fear of the applicant being deported to Mexico, she now also suffers from lack of concentration, uncontrollable crying, anxiety, and weight loss.

A psychologist, Dr. [REDACTED], evaluated the applicant's wife on four occasions in November 2011 and diagnosed her with major depressive disorder and anxiety disorder. She indicates that the applicant's spouse's current symptoms interfere with her ability to perform her duties at home and to relate to family and friends. She has become detached, withdrawn and isolated. The applicant's wife reported having nightmares of being separated from her husband, fatigue, hopelessness, and feelings of worthlessness among other symptoms. Dr. [REDACTED] found that she endorses "active suicidal ideation." She takes two medications, Prozac and Trazodone, to treat her mental health conditions. Dr. [REDACTED] indicates that the applicant's spouse generally has poor coping skills, making it, "nearly impossible for her to manage her emotions in an effective manner." When faced with external stressors, "she becomes anxious, stressed and profoundly depressed." Dr. [REDACTED] found her self-reported results to be above the 97th percentile in clinical ranges for many mental health categories, including anxiety, depression, somatic complaints, attention problems, and avoidant personality.

Dr. [REDACTED] reports that the applicant's wife and their family are financially dependent on the applicant. Dr. [REDACTED] states that her elevated levels of depression keep her from functioning outside her home and retaining employment. The applicant's spouse explains that without the applicant she would be unable to pay their home mortgage and household expenses. Financial documentation of the applicant's yearly income, mortgage and various bills and expenses were submitted as evidence. She fears that the applicant's removal would cause them to lose their home.

Dr. [REDACTED] also notes that the applicant's spouse receives medical insurance through the applicant's employer. If he were deported to Mexico, she would not have access to the medicine she requires for her depression and anxiety. Furthermore, two of their children suffer from asthma. A medical report of their eldest daughter indicates that she suffers from headaches and asthma and requires medication. Dr. [REDACTED] also explains that asthma has been found to be triggered by sadness, indicating that the applicant's separation would cause further deterioration of their children's condition.

Dr. [REDACTED] reports that the applicant's spouse is extremely fearful for the applicant's safety in Mexico, where violent crime is a serious problem. The U.S. State Department's current *Mexico Travel Warning*, dated November 20, 2012, states that crime and violence are serious problems throughout the country and can occur anywhere. The report states that Transnational Criminal Organizations ("TCOs") are engaged in a violent struggle to control drug-trafficking

routes and other criminal activity. "According to the statistics last published by the Mexican government in late 2011, 47,515 people were killed in narcotics-related violence in Mexico between December 1, 2006 and September 30, 2011, with 12,903 narcotics-related homicides in the first nine months of 2011 alone. While most of those killed in narcotics-related violence have been members of TCOs, innocent persons have also been killed."

The applicant's wife also states that she is unable to concentrate and sleep when she thinks of the applicant being deported. She has lost weight and cries all the time. She explains that she does not want to do anything but sleep and pretend that her reality is a dream. She maintains that without the applicant, she would not be able to support herself or their family financially. She and her children also fear for the applicant's safety and are nervous that the applicant may be harmed or killed in Mexico because of the violence there.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including her significant emotional and psychological conditions, the impact of these on her ability to function on a day-to-day basis, her depression and anxiety, the detrimental emotional and physical effects on their children that she would endure, the financial difficulty described, and her fear for the applicant's safety in Mexico. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's lawful permanent resident spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse states that she has lived in the United States since 1985, when she was 14 years-old. Her mother is a U.S. citizen and her siblings and extended family live in the United States. She has no family in Mexico, other than a cousin who she does not know. The applicant's parents and siblings live in his small hometown of Puebla. The applicant's spouse returned to Mexico once to visit them. She states she would have difficulty adjusting to life in Mexico and finding employment there given her number of years in the United States, medical issues, and minimal education of six years. The applicant and his wife also have four U.S. citizen children who are all minors and dependent on them for their care. In her report, Dr. [REDACTED] states that should the applicant, the applicant's spouse and their children move to Mexico, they would suffer immediate financial devastation and poverty, given the improbability of the applicant and his spouse gaining employment and the deplorable living conditions they would face in the applicant's town and small family home. This would worsen the applicant's spouse's depression as well as the asthmatic health conditions of their two children. She concludes that they could not afford medical care. She indicates that because their income would decrease, the applicant's spouse would not have the resources to visit her mother, siblings, and extended family in the United States. The applicant's spouse also notes the violence and crime in Mexico that they would face, as noted previously in the U.S. Department of State's Travel Warning.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her adjustment to a country in which she has not resided for 27 years; her close family and community ties in the United States; her home ownership in the United States; her significant emotional and psychological conditions; and stated economic, employment,

and safety-related concerns regarding Mexico. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

The AAO notes that *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-Morales*, 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-Morales at 300.

In *Matter of Mendez-Morales*, 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 favorable factors in the present case include extreme hardship to the applicant's spouse as a result of the applicant's inadmissibility; the applicant's significant family ties to his spouse, their four children and his spouse's family in the United States; the financial and emotional support he provides to his family; his propensity to work and pay taxes, expenses and a home mortgage; and his lack of a criminal record over the last five years. The unfavorable factors are the applicant's immigration violations of unlawful entry, presence and unauthorized employment in the United States and two convictions of theft and one conviction of prostitution. Although the applicant's violations of immigration and criminal law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, 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 and the application will be approved.

ORDER: The motion is granted and the underlying Form I-601 application is approved.