



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JUL 15 2013 Office: LOS ANGELES, CALIFORNIA

FILE: [REDACTED]

IN RE: Applicant: [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:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles. 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 and reconsider. 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and 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 June 1, 2010.

On appeal, the AAO concluded that although the applicant established that extreme hardship would be imposed on a qualifying relative in the event of separation, the applicant failed to assert or establish that extreme hardship would be imposed on a qualifying relative in the event of relocation, and the AAO dismissed the appeal accordingly. *See Decision of the AA O*, dated July 27, 2012.

In response, counsel for the applicant filed *Form I-290B*, Notice of Appeal or Motion (Form I-290B), indicating that he was filing a motion to reopen and reconsider by marking box F in Part 2. *See Form I-290B*, received August 27, 2012.

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). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel contends that pursuant to *Batoon v. INS*, 707 F.2d 399, 401 (9th Cir. 1983), the AAO must consider “as independent factors the probable effect of deportation on the health of the alien’s U.S. citizen child and the adequacy of medical care on the alien’s homeland,” despite the applicant’s failure to make such assertions on appeal or submit country conditions evidence addressing the adequacy of medical care in Mexico. Counsel further asserts that the finding by the applicant’s spouse’s physician that the applicant’s removal may cause the applicant’s spouse “repeat psychiatric hospitalization or at the extreme suicidal ideation” must be considered in light of relocation as well as separation. Moreover, counsel supplements the record on motion with a new declaration from the applicant’s spouse in which she addresses relocation-related hardship for the first time. The record has additionally been supplemented with a new letter from [REDACTED]

██████████ M.D.; prescription records; a letter from the applicant's spouse's employer; a letter from ██████████ the father of the applicant's spouse's son, ██████████ and ██████████'s birth certificate confirming Mr. ██████████'s paternity. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2), and the motion will be granted and the application reopened.

In addition to the supplemental evidence described above, the record contains but is not limited to: Forms I-290B; various immigration applications and petitions; a hardship declaration; psychiatric records; medical records for the applicant's spouse and children; workers compensation records; and letters from the applicant, the applicant's spouse, and their friends. The entire record was reviewed and considered in rendering this decision on motion.

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.

The record reflects that the applicant entered the United States on December 12, 1999 by presenting an I-551 permanent resident card belonging to another individual. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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.

A waiver of inadmissibility under section 212(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 or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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*, 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.

The record reflects that the applicant's spouse is a 38-year-old native and citizen of the United States who has been married to the applicant since December 2007. She states that she would suffer extreme hardship without the applicant on whom she counts for physical, emotional and financial support. The applicant's spouse writes that the applicant is a wonderful husband and father who is actively involved in raising their children.

The applicant's spouse also asserts that she has suffered from severe depression and anxiety for more than a decade and has been under continuous "psychiatric" treatment since 2001. Documentation in the record shows that she has been treated since at least May 8, 2001 by Primary Care Physician, [REDACTED] M.D. Dr. [REDACTED] writes in June 2010 that the applicant's spouse's "extreme depression and anxiety" has been difficult to control with a constantly changing medical regimen. Throughout the treatment notes submitted for the record, neither her depression nor anxiety are characterized as "extreme" by Dr. [REDACTED] who indicates repeatedly that the applicant's spouse's "depression/anxiety" is "stable on meds." Dr. [REDACTED] maintains that the applicant's spouse admitted herself for inpatient psychiatric care in July 2009, has undergone behavioral therapy in the past, and is currently in weekly therapy in addition to taking multiple antidepressants and anti-anxiety medications. In a brief letter to Dr. [REDACTED] dated August 13, 2009, [REDACTED] M.F.T., writes that she has diagnosed the applicant's spouse with panic disorder. Dr. [REDACTED] contends that the applicant's spouse has become stable and significantly less depressed since meeting the applicant and that his removal would cause her to suffer extreme hardship. He states that the applicant has been a supportive and positive force in his spouse's life and his removal "may lead to repeat psychiatric hospitalization or at the extreme suicidal ideation." The AAO noted in reviewing the appeal that the latter has never been indicated throughout 10 years of treatment records and Dr. [REDACTED] offers no explanation or basis for this assertion.

The applicant's spouse states that in addition to her depression, she suffers medical problems that cause her significant physical pain. She explains that her employment as a medical records coordinator requires her to do repetitive lifting, carrying, and reaching for files over her head. The applicant's spouse writes that after 15 years of this employment, she now suffers from "overuse syndrome of extremity" in her right arm and shoulder as well as a very painful disc protrusion in her back for which she has been treated with cortisone epidural blocks. She explains that because of these conditions, she has had to take time off work, including three months in 2007 and two in 2009. The applicant's spouse indicates that her doctor limited her lifting to less than 25 pounds, which affects both her work and caring for her now 4-year-old daughter. [REDACTED] M.D. confirms in an October 29, 2009 letter that the applicant's spouse may continue working with the restrictions of no repetitive motions and no pushing or lifting over 25 pounds. Dr. [REDACTED] diagnoses the applicant's spouse with cervical strain, a small central herniation at C5—

6 with cord compression, and “median motor amplitude abnormality of the right wrist (congenital thenar deficiency versus chronic cervical radiculopathy) – by report.” With regard to the applicant’s spouse’s daily life, Dr. [REDACTED] states that she does not have any impairment in getting dressed, putting on socks and shoes, using the toilet, doing housework, driving and sleeping through the night, though she reports that sometimes “things just fall from [her] right hand.”

The applicant’s spouse indicates that in addition to her own health concerns, two of her children suffer from asthma. Significant medical documentation demonstrates that [REDACTED] age 4, and [REDACTED] age 8, have suffered from asthma throughout their young lives. Documentation shows that both use prescription medications, inhalers and nebulizers. The applicant’s spouse states that [REDACTED] require frequent visits to doctors; are prone to colds, bronchitis and respiratory infections; and she feels she could not cope with all the responsibilities of being a patient without the applicant by her side. She explains that the applicant has taken on all the responsibilities of being a father to all four children and is actively involved in their lives.

The AAO has considered cumulatively, both on appeal and motion, all assertions of separation-related hardship to the applicant’s spouse, including her history of depression and anxiety; medical and physical conditions and limitations; physical, emotional and financial difficulties raising four children alone and the medical conditions and special needs of two of her children. The AAO reaffirms our earlier findings concerning separation, specifically that the evidence considered cumulatively demonstrates that the applicant’s U.S. citizen spouse would suffer extreme hardship due to her permanent separation from him.

With regard to hardship she would experience upon relocation, the applicant’s spouse has for the first time on motion addressed her hardships related thereto. On motion, the applicant’s spouse explains that the mere prospect of relocating to Mexico creates in her “a sense of unimaginable desperation, sadness and despair,” likely to exacerbate her already significant depression and anxiety. She also states that relocation to Mexico would deprive her of effective treatment for her severe depression and anxiety and “will represent a sudden cessation of treatment” by the physicians who have treated her since 2001. The record contains no country conditions evidence demonstrating that the applicant’s spouse would be unable to secure effective treatment for depression and anxiety in Mexico. The AAO acknowledges, however, that the applicant’s spouse would not have access to the consistent psychological treatment provided to her for more than a decade by known and trusted physicians. [REDACTED] M.D., writes on motion that the applicant’s spouse has suffered at times from “extreme depression and anxiety” over the ten years he has treated her, conditions he characterizes as “difficult to control with a constantly changing medical regimen.” Dr. [REDACTED] adds that due to the applicant’s spouse’s fragile mental state, she would have to join the applicant in Mexico, a move that “may lead to repeat psychiatric hospitalization or at the extreme: suicidal ideation.” Counsel cites *Batoon v. INS*, 707 F.2d 399 (9th Cir. 1983), to support his assertion on motion that “the probable effect of deportation on the health of the alien’s U.S. citizen child and the adequacy of medical care on the alien’s homeland” are independent factors that the AAO failed to consider and did not address in the record dismissing the applicant’s appeal. The present case, however, is distinguished from *Batoon* where “the BIA did not consider the psychiatric report (which found that deportation would likely cause

Batoon serious psychological illness) independently of the adequacy of medical care in the Philippines.” *Gonzales-Batoon v. INS*, 767 F.2d 1302 (9th Cir. 1985), at 1302. In the present case, the record reflects that the AAO considered Dr. [REDACTED] earlier letter, which did not address the applicant’s spouse’s relocating to Mexico or the effects of such relocation on her.

The applicant’s spouse also maintains on motion that relocating to Mexico would cause her to lose both her steady employment of 16 years and her employer-provided health insurance on which she relies for herself and her four children, two of whom are asthmatic and require special medical care and medication. Corroborating employment, insurance and medical records were submitted to support her assertions. Additionally, the applicant states that she would “cease to function” in Mexico, a country in which she has never resided and in which she will find herself without access to medical treatment, health insurance or employment. The applicant explains that not only her own medical and psychological conditions concern her; she also fears for her two minor children who suffer from asthma and would be unable to obtain proper medical treatment in Mexico. The applicant’s spouse indicates that this hardship to her children would cause her extreme hardship.

The applicant’s spouse, moreover, fears “physical harm or injury due to the well-known crime and violence situation in Mexico.” The AAO has reviewed the U.S. State Department’s current *Mexico Travel Warning*, dated November 20, 2012. Therein, U.S. citizens are warned that crime and violence are serious problems throughout the country and can occur anywhere. U.S. citizens have fallen victim to transnational criminal organization activity including homicide, gun battles, kidnapping, carjacking and highway robbery, and the number of kidnappings and disappearances throughout Mexico is of particular concern. The applicant’s spouse concludes that relocation will result in the loss of her long-term job, medical insurance and treatment, children’s quality of education, family’s standard of living, security, and “eventually [her] health and life.”

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse, including that she was born and raised in the United States, has never resided in Mexico, and has no familiarity with or connection to the country except through the applicant; her lengthy history of depression and anxiety, currently characterized by her treating physician as severe with the possibility of suicidal ideation; the sudden loss of access to her known and trusted physicians who have treated her for more than a decade; the potential lack of adequate medical care, treatment and medications in Mexico for both her and her children, two of whom are asthmatic and require special medical treatment and medications on an ongoing basis; her additional medical conditions and physical limitations; the physical, emotional and financial difficulties of relocating to a foreign country with several children, at least one with special needs; the loss of her long-term employment of 16 years and her employer-provided health insurance, on which she and her children rely; the unlikelihood that as foreign national who has never resided in Mexico she will be able to secure viable employment; and her concerns for the lives and safety of herself and her U.S. citizen children in Mexico. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant’s U.S. citizen 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-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.

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-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 favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family ties to the United States, particularly to his 5-year-old U.S. citizen daughter; the physical, emotional and financial support he has provided to his U.S. citizen spouse, U.S. citizen child, and his three U.S. citizen stepchildren whom he has been caring for as his own; and his apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations, including his entry into the United States by presenting a lawful permanent resident card not his own, unlawful presence and unauthorized employment. Although the applicant's violations of immigration 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 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 motion is granted and the underlying Form I-601 application is approved.