

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: NOV 14 2013

Office: CHICAGO, IL

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:
[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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the appeal 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He 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.

In a decision dated June 8, 2012, the field office director denied the Form I-601 waiver application, finding that the applicant failed to establish extreme hardship to a qualifying relative. The field office director also found that even if the applicant established extreme hardship to a qualifying relative, he would not warrant the favorable exercise of discretion.

On appeal, counsel stated that the field office director erred as a matter of law and fact by ignoring some and misconstruing other relevant positive factors in the applicant's case. She stated that the field office director also erred in denying the applicant's waiver application based on speculation unsupported by the record.

In our decision, dated May 13, 2013, we found that the applicant's spouse established that she would suffer extreme hardship as a result of relocation due to her substantial ties to the United States, her lack of ties to Mexico, and the country conditions she would face in Mexico given her professional background and employment history. However, we also found that although the applicant's spouse claimed she would suffer extreme financial and emotional hardship as a result of being separated from the applicant, the record did not fully support the applicant's spouse's assertions. Our previous decision also acknowledged counsel's assertions regarding the field office director giving undue weight to the applicant's criminal offense and disregarding his rehabilitation and community service when discussing discretion. We noted the applicant's involvement with his community church and youth soccer team, but found no purpose would be served in making a decision on discretion because the applicant had failed to establish that a qualifying relative would suffer extreme hardship as a result of his inadmissibility.

On motion, the applicant submits documentation of new hardship factors in his case. Counsel states that the applicant's children and spouse are suffering financially and emotionally as a result of the applicant's inadmissibility. Specifically, he states that as a result of the applicant's inadmissibility, his daughter will no longer be able to continue her college studies, the applicant is no longer able to work as a carpenter with his union, and the applicant's spouse and daughters are suffering stress, anxiety, and depression as a result of these social barriers.

On appeal, the record of hardship included: counsel's brief, a statement from the applicant's spouse, country conditions information, evidence of ties to the community, and evidence of family ties to the United States.

On motion, counsel submits statements from the applicant, his wife, and his daughter; financial documentation; medical documentation, and a letter from a family friend.

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) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record showed that on February 22, 2008, in Illinois, the applicant was convicted of Identity Theft under section 720 Illinois Compiled Statutes (ILCS) 5/16G-15(a)(1), a Class 1 Felony, and was sentenced to 30 months of probation. The applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant has not contested this finding.

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 subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . 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 spouse and four children 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-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. *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.

We note that because we previously found that the applicant has established hardship upon relocation, we will not discuss this aspect of hardship, and will focus on whether a qualifying family member will suffer extreme hardship as a result of separation.

We find that the record now establishes that the applicant's spouse will suffer extreme hardship as a result of relocation and as a result of separation. The record indicates that the applicant and his wife have been married for 24 years and together they support, both emotionally and financially, their four daughters and grandson. The record indicates that the applicant has been unable to work as a union carpenter because of his inadmissibility and that this loss of income is causing stress and anxiety throughout the family. The record states that the applicant's spouse has to work a 3:30pm to 11:45pm shift cleaning schools to help pay for family expenses and as a result is not able to see her youngest daughter, who the applicant cares for in her absence. Statements in the record indicate that the applicant's children who are able, are trying to work to help the family, but two of the three are in college and they are not able to make up for the loss of the applicant's income at approximately \$41 per hour. The record shows that the applicant's family income in 2011 and 2012, when the applicant was working was approximately \$57,000 and \$84,000. Currently, pay statements indicate that the applicant's spouse will make approximately \$27,000 in 2013. We find that the record also indicates that the applicant would face difficulty establishing himself in Mexico as his entire family, including his parents, six siblings, four children, wife, and grandchild are either lawful permanent residents or U.S. citizens. Finally, statements in the record corroborate the applicant's statements regarding the extreme emotional hardship the applicant's inadmissibility is causing his family, in particular his spouse. Thus, considered in the aggregate, the applicant has established that the applicant's 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-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.

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.

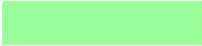
The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional 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 favorable factors in the applicant's case include his strong family ties to the United States, the hardship his family would experience if he were not granted a waiver of inadmissibility, his involvement with his community church and youth soccer league, the regret and remorse he has expressed over the commission of his crime, and the support he provides to his family.

The unfavorable factors in the applicant's case include his unlawful residence in the United States and his criminal record.

Although the applicant's violations of immigration and criminal law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. His motion is granted and the appeal is sustained.

(b)(6)



NON-PRECEDENT DECISION

Page 7

ORDER: The motion is granted and the appeal is sustained.