



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **APR 27 2015** Office: SAN ANTONIO, TEXAS FILE: [Redacted]

IN RE: [Redacted]

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director for Services, San Antonio, Texas. 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 section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or a material misrepresentation after claiming to be a U.S. citizen. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for being convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated October 17, 2006, the Acting District Director for Services found that in addition to the applicant's inadmissibilities under sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Act, the applicant was also inadmissible under section 212(a)(9)(A) of the Act and because her Application for Permission to Reapply for Admission was denied, there would be no purpose in granting her waiver application. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated November 13, 2006 and received by the AAO on September 22, 2014, counsel states that denying the applicant's application for permission to reapply for admission because she was not eligible for a waiver of her other inadmissibilities and then denying the applicant's waiver application because her application for permission to reapply for admission was denied was improper.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(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.

(ii) Falsely claiming citizenship. –

(I) In General –

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit 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:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 establishes that on March 29, 1990, the applicant attempted to enter the United States at the [REDACTED] Texas Port of Entry by claiming to be a U.S. citizen. The applicant presented a Texas birth certificate, issued to a “[REDACTED]”. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

Applicants making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3. Because the applicant’s misrepresentation occurred before September 30, 1996, she is eligible for a waiver pursuant to section 212(i) of the Act. The applicant’s qualifying relative is her U.S. citizen spouse.

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-

...

(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 Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record establishes that on April 12, 1990, the applicant was convicted of presenting fraudulent documents under 8 U.S.C. §1306(c) and was sentenced to three months imprisonment.

At the time of the applicant's conviction, 8 U.S.C. §1306(c) stated:

Any alien or any parent or legal guardian of any alien, who files an application for registration containing statements known by him to be false, or who procures or attempts to procure registration of himself or another person through fraud, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$1,000, or be imprisoned not more than six months, or both; and any alien so convicted shall, upon the warrant of the Attorney General, be taken into custody and be deported in the manner provided in part V of this subchapter.

The Board has held that in cases involving fraud of the government, the government need not have lost money or property in order for the crime to involve moral turpitude. *Matter of S--*, 2 I&N Dec. 225 (BIA 1944). Instead, the mere act of obstructing an important function of a department of the government by deceitful means is sufficient to find moral turpitude. *Matter of Flores*, 17 I&N Dec. at 229; *see also Matter of D--*, 9 I&N Dec. 605, 608 (BIA 1962); *Matter of E--*, 9 I&N Dec. 421, 423-24 (BIA 1961). Thus, the applicant's crime is a crime involving moral turpitude, but she is not inadmissible under section 212(a)(2)(A)(I) of the Act because her conviction qualifies for the petty offense exception. However, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides 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*, 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 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 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.

Because the initial record of appeal, through no fault of the applicant, included hardship documentation from 2006 and no later, we requested the applicant submit updated evidence of hardship. On February 12, 2015, additional hardship evidence was submitted. All hardship evidence in the record will be considered in this appeal.

The record of hardship includes: a statement from the applicant’s spouse, dated 2014; a statement from the applicant’s spouse, dated 2005; 17 letters from family, friends, and co-workers; financial documentation; the death certificate of the applicant’s mother-in-law; personal notes to the applicant from her spouse; and photographs of the family.

The record establishes that the applicant’s spouse will suffer extreme hardship as a result of the applicant’s inadmissibility. The record establishes that the applicant’s spouse would suffer extreme emotional and financial hardship as a result of relocating to Mexico. The applicant’s spouse is fifty years old and has significant ties to the United States. The applicant’s spouse was born and raised in the United States and does not speak Spanish fluently. The record establishes that the applicant’s spouse has been a mechanical engineer with the same company since 2001 and is currently enrolled in a Master’s Degree program. In addition to his career and employment in the United States, the applicant’s spouse has an adult daughter from his first marriage living in Texas, he owns two rental properties in the United States, and is a very active and devoted member of his church. The applicant’s spouse states that in Mexico he would have difficulty finding a job to support himself and his family because he barely speaks Spanish. Given the applicant’s spouse’s significant financial and familial ties to the United States, his length of residence in the United States, and his lack of any ties to Mexico, the record establishes that he will suffer extreme hardship as a result of relocation.

The record also establishes that the applicant would suffer extreme emotional hardship as a result of separation. The applicant's spouse states that he and the applicant work as a team and without the applicant he would not be able to participate in many aspects of his current life. The record states that the applicant is her spouse's mental strength, especially given the recent death of the applicant's spouse's mother. The applicant's spouse was his mother's only son and, as stated in two of the letters submitted from friends, the applicant's spouse is going through a deep grieving process and the applicant is helping him through this hard time. The record also indicates that the applicant cooks her husband healthy foods and manages their household. The record indicates, through the applicant's spouse's statement and numerous statements in the record, that the applicant manages the couple's rental properties. The applicant's spouse states that because the applicant manages these aspects of their life together, he can focus on his employment, education, and community involvement. After the death of the applicant's spouse's mother, the applicant states that he has no other siblings and his father is dead. He states that the only relatives he has are his daughter and the applicant. The record includes at several detailed letters from colleagues and friends, supporting the statements made by the applicant's spouse regarding the couple's closeness and the life responsibilities each share.

The emotional suffering that will be experienced by the applicant's spouse surpasses the hardship typically encountered in instances of separation because of his reliance on the applicant to assist in so many aspects of their lives together, exacerbated by the grief of the applicant's spouse losing his mother as an only child, and the fact that if the applicant's waiver application is denied, the applicant and her spouse face a permanent separation. The record establishes that the applicant's spouse would suffer extreme hardship if the applicant's waiver of inadmissibility 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.

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 favorable factors in the applicant's case include: the extreme hardship her U.S. citizen spouse would suffer as a result of her inadmissibility; the applicant's record of self-employment; the lack of any criminal record; and, as attested to by numerous letters in the record, the applicant's role as a kind, loving, and supportive mother, wife, and member of the community. The unfavorable factors in the applicant's case include the applicant's fraudulent entry into the United States, her reentry without prior permission and her illegal residence in the United States.

Although the applicant's violations of immigration law are serious, 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 her burden and the appeal will be sustained.¹

ORDER: The appeal is sustained.

¹ The applicant remains inadmissible under section 212(a)(9)(A) of the Act as a result of her removal in 1990. The applicant's Form I-212 Application for Permission to Reapply for Admission (Form I-212) was denied and the AAO dismissed an appeal on August 23, 2006. Though the AAO has sustained her appeal of the Form I-601, she still requires an approved Form I-212.