

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



U.S. Citizenship
and Immigration
Services



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Date: NOV 06 2012

Office: CIUDAD JUAREZ

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Maria F. Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained. The waiver application is approved.

The record establishes that the applicant is a native and citizen of Mexico who attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. Specifically, the record establishes that the applicant presented a fraudulent I-94 Card when attempting to procure entry to the United States in 2004. The applicant does not contest this finding of inadmissibility. Rather, he is applying for 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 lawful permanent resident mother.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 1, 2010.

In support of the appeal, the applicant's mother submits a letter and translation and medical and mental health documentation. The entire record was reviewed and considered in rendering this decision.

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.

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 immigrant 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...

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. The applicant's lawful permanent resident mother is the only qualifying relative in this case. Hardship to the applicant can be considered only

insofar as it results in hardship to a 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-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.

The applicant's lawful permanent resident mother contends that she will suffer emotional and physical hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration, the applicant's mother explains that she is in her late 70s and is widowed and she wants her sons to reside in the United States with her. She notes that although 3 of her sons currently reside in the United States legally, she desperately wants the applicant to relocate to the United States so her family can be complete. She further explains that her health and moods have deteriorated and since her sons have their own families, she wants the applicant to reside in the United States so that he may help take care of her. Finally, the applicant's mother details that she is afraid to travel to Mexico regularly due to violence. *Letter from* [REDACTED] dated September 25, 2010.

To begin, a letter has been provided from the applicant's mother's treating physician, [REDACTED] confirming that she is being treated for high blood pressure, diabetes and nervous breakdown. [REDACTED] notes that the applicant's mother's health has been declining since her husband's death and her nervous situation has worsened in the last six months as a result of her son's inadmissibility and the problematic safety issues in Mexico. Said documentation further establishes the numerous medications the applicant's mother is taking for these conditions, including Tofranil, an antidepressant. *See Letter and Translation from* [REDACTED]. In addition, a letter has been provided from [REDACTED], Psychologist, noting that the applicant's mother has been getting mental health treatment since January 2010. [REDACTED] further notes that due to the applicant's mother's advanced age and the problematic country conditions in Mexico, it is not recommended that she travel to Mexico regularly to visit her son. *See Letter and Translation from* [REDACTED] *Psychology*, dated September 25, 2010. Finally, a letter has been provided from the applicant's brother, [REDACTED] referencing the hardships the applicant's mother is experiencing as a result of long-term separation from the applicant. *See Letter from* [REDACTED].

The record reflects that the cumulative effect of the emotional, psychological and physical hardship the applicant's mother, currently 81 years old, is experiencing due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's mother would suffer extreme hardship if she remains in the United States.

The applicant's mother contends that she would experience extreme hardship were she to relocate abroad to reside with her son due to his inadmissibility. To begin, she explains that she has been residing in the United States for over 15 years. She further outlines that three of her four sons, and their families, reside in the United State and she is very close to them. Further, the applicant's mother references the problematic country conditions in Mexico as a result of crime and violence. *Supra* at 1.

The record establishes that the applicant's lawful permanent resident mother has been residing in the United States for more than fifteen years. She is currently 81 years old. Were she to relocate to Mexico to reside with the applicant, she would have to leave her three other sons, their families, her church and her community. Based on the declarations provided by the applicant's siblings, the family is close-knit; their mother moves from one sibling's home to another. Finally, the AAO notes that the U.S. Department of State has issued a Travel Warning for Mexico, and in particular, Coahuila, the applicant's birth place, due to the high rates of violent crimes and narcotics-related murders and Transnational Criminal Organizations (TCO) activity. *Travel Warning-Mexico, U.S. Department of State*, dated February 8, 2012. It has thus been established that the applicant's mother would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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-Morales, 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 favorable factors in this matter are the extreme hardships the applicant’s lawful permanent resident mother and U.S. citizen or lawful permanent resident siblings would face if the applicant were to remain in Mexico, regardless of whether they accompanied the applicant or remained in the United States and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant’s fraud and/or willful misrepresentation, as outlined above.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, 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. Accordingly, this appeal will be sustained and the application approved.

ORDER: The waiver application is approved.