

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

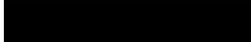


U.S. Citizenship  
and Immigration  
Services



45

Date: OCT 17 2012 Office: GUATAMELA CITY, GUATAMELA

FILE: 

IN RE: 

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:



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,

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

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Guatemala 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 having attempted to procure admission into the United States by fraud or willful misrepresentation on February 3, 1997 and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant's mother is a U.S. citizen and she seeks a waiver of inadmissibility to reside in the United States with her family.

In a decision dated May 14, 2010, 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 Grounds of Excludability (Form I-601) accordingly.

On appeal, counsel states that the field office director incorrectly denied the applicant's waiver because the evidence previously submitted and currently being submitted clearly shows an extreme hardship to the applicant's mother, the evidence shows that the applicant has been rehabilitated, the service did not consider the facts surrounding the applicant's misrepresentations and failure to appear at her removal hearing, and the evidence shows that the applicant is a victim of domestic violence and spousal abuse, which led to many of her actions.

The record indicates that on or about February 3, 1997 the applicant entered the United States without inspection, was apprehended, and placed into removal proceedings. When questioned by immigration officers at this time, the applicant presented a fraudulent I-688B card, stated that she was a [REDACTED] and was born on December 5, 1975. The AAO notes that the record makes numerous references to the applicant making a false claim to U.S. citizenship, but this claim is not supported by the record. The applicant's Record of Deportable Alien (Form I-213), dated February 3, 1997, states that the applicant first claimed to be a Mexican citizen before admitting her true citizenship as Guatemalan. It does not show that she ever claimed to be a U.S. citizen. Following this apprehension, on January 15, 1998, the applicant was ordered removed in absentia after she failed to appear for her hearing. The AAO notes that the record includes two arrest records for the applicant, one on February 24, 2000 for misappropriation of identification documents and obstructing resisting a police officer and one on April 25, 2000 for misappropriation for identification documents. The record shows that the charges from February 2000 were dismissed on July 27, 2000. The record is not completely clear how the April 2000 charges were resolved, though we note the that case number [REDACTED] is the same as the number for the February charges, suggesting that the April charges were dismissed in July 2000 as well. The applicant departed the United States in October 2002.

The AAO finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission

within ten years of her last departure from the United States. However, the applicant will no longer be inadmissible under this section of the Act after October 2012. Thus, we will focus our decision on the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States by fraud or willful misrepresentation.

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.

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 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.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the only qualifying relative 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-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 record of hardship includes: a statement from the applicant, a letter from the applicant's psychologist, educational documents for the applicant's children, a letter from the applicant's mother, medical documentation for the applicant's mother, documentation regarding the applicant's adopted brother, statements from the applicant's father and sister, and country conditions information for Guatemala.

The AAO finds that the record establishes that the applicant's mother is and will suffer extreme emotional and physical hardship as a result of the applicant's inadmissibility. The record indicates

that the applicant's mother has a thirteen year old adopted son, who has been diagnosed with bipolar disorder, and attends therapy sessions regularly as a result of this diagnosis. The record also indicates that the applicant's mother could not relocate to Guatemala without this child and to relocate with him would be an extreme hardship. The applicant's mother has been living in the United States since 1992 and has 8 children, all of whom, except for the applicant, live in the United States. The record also shows through country condition reports that in Guatemala a person with a mental health condition, such as the applicant's brother, would not be afforded proper treatment or protection under the law and within society.

We also find that the applicant's mother would suffer extreme hardship as a result of separation. The record establishes, through a doctor's note, a statement from the applicant's mother, and a statement from the mother's spouse, that the applicant's mother's health is worsening as a result of the stress created by the applicant residing in Guatemala, with no family and four children to raise. A letter from the applicant's mother's doctor indicates that the applicant's mother is suffering from depression, acute anxiety/panic disorder, insomnia, and peptic ulcer disease as a result of her daughter residing in Guatemala. Thus, the AAO also finds that the applicant's mother is suffering extreme hardship as a result of separation.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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-Moralez*, 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 AAO notes that documentation in the record clearly shows that from approximately 1997 to 2007 the applicant was in an abusive relationship with the father of her children which affected much of her decision making during this time period.

The adverse factors in the present case are the applicant's attempting to enter the United States without inspection, her misrepresentations to immigration officers, her failure to appear at her removal proceedings and her unlawful residence in the United States. The AAO notes that all of these events occurred during the time period of 1997 to 2002.

The favorable factors in the present case are the applicant's family ties to the United States, including her mother, seven siblings, and two children; the lack of a criminal record or offense since 2000; the emotional and physical hardships the applicant's mother is facing as a result of the applicant's inadmissibility; the applicant's record of employment in Guatemala; and, as evidenced by her daughter's statement, the applicant's attributes as a supportive and responsible mother.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.