

(b)(6)

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

DATE: APR 12 2013 OFFICE: HARLINGEN, TEXAS

IN RE:

Applicant:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects the applicant is a native and citizen of Nicaragua 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 willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated February 15, 2012.

On appeal, counsel provided additional documentation to demonstrate hardship to the applicant's U.S. citizen spouse. *See Notice of Appeal or Motion (Form I-290B)*, dated February 21, 2012.

The record includes, but is not limited to: correspondence from current and previous counsel; letters of support; identity, medical, and financial documents; and photographs.¹ The entire record, with the exception of Spanish-language documents without English translations, was reviewed and considered in rendering a decision on the appeal.

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

(i) In general.- 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.

¹ The AAO notes the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As a certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that on June 4, 2001, the applicant obtained a U.S. Laser Visa (Border Crossing Card) by indicating she was a national of Mexico born on October 10, 1953, and subsequently was admitted to the United States upon presenting the Border Crossing Card.² The record also reflects that on July 7, 2008, the applicant submitted Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), and included a fraudulent Mexican birth certificate. The record further reflects the applicant did not correct her nationality or date of birth during her adjustment of status interview conducted on November 18, 2008. Accordingly, the Field Office Director found the applicant inadmissible for misrepresenting her nationality, utilizing a different date of birth in obtaining a nonimmigrant visa, and failing to correct the record during her adjustment of status interview. The record supports the findings, and the AAO concurs the misrepresentations were material. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) 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.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. 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*,

² The AAO notes the applicant also indicated that she was a judge when she applied for the Border Crossing Card.

10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) 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 BIA 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 BIA 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 id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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 spouse contends he would suffer extreme emotional, medical, and financial hardship in the applicant's absence as: he is 91-years-old and is getting older and sicker; the applicant is his "pillar of support", guardian, and primary caretaker, and as such, he cannot handle being apart from her; he cannot move or go anywhere without her because he is wheelchair bound; he cannot bathe, clean, dress, eat, or attend medical appointments without assistance; he suffers from chronic debilitating illnesses, including hypertension, hypothyroidism, dementia, chronic kidney disease, depression, osteopenia, and coronary artery disease, and his conditions are worsening every day; he fears he may have a heart attack; he does not understand why the U.S. Citizenship and Immigration Services (USCIS) does not consider his illnesses or his stepson's illness to be life-threatening; he and the applicant are suffering deeply from the loss of the applicants' son, who passed away on September 21, 2011, from anal cancer; the applicant's only family live in the United States; the applicant is the only one who works and struggles to support their household as he is disabled and retired; he does not want her to worry about him while she is at work; he has a daytime caretaker, but the applicant is the only one who takes care of him after her workday; and travel costs to Nicaragua are not cheap. The applicant further indicates: her spouse is delicate, and his situation is getting worse; she must take care of him, including times when she must travel; and she wanted to be close to her son during his terminal condition.

The record is sufficient to establish the applicant's spouse would suffer hardship in her absence. The applicant has been married to her elderly spouse for almost 17 years, and she plays an essential role in his daily care as he receives ongoing treatment through Medicare for various medical conditions. *See Medical Letter Issued by [REDACTED] M.D.*, dated March 7, 2012; *see also Medicare Letter*, dated August 22, 2011. Further, she is the sole breadwinner as a fulltime cook at the [REDACTED] earning an hourly wage of \$8.75. *See Earnings Statement*, from February 16, 2012 – February 29, 2012; *see also Employment Letter Issued by [REDACTED] Human Resources*, dated June 22, 2009. And, although the record does not include sufficient evidence of the applicant's spouse's current financial obligations or his inability to meet those obligations in the applicant's absence or of travel-related costs and employment or labor conditions in Nicaragua and the applicant's inability to contribute to the support of her and her spouse's households, the AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse contends he would suffer extreme hardship upon relocating to Nicaragua to be with the applicant as: he is 91-years-old, and it would not be easy for him "to start all over again"; as a U.S. citizen, he has the right to enjoy the opportunities the U.S. offers such as being in a peaceful place during his last days; Nicaragua is a strange place, an enemy of the United States, and loyal to Chavez's ideas, so he is unwilling "to put his life on the line" or travel there; he is sick and needs care, medications, and sometimes hospitalization; salaries would not be comparable to those in the United States, and the applicant would not make enough to support their needs or to pay the bills;

and he does not want to anguish or despair as he watches the applicant “stress out” to ensure that their expenses are being met.

The record is sufficient to establish the applicant’s elderly spouse would suffer hardship if he were to relocate to Nicaragua. The record reflects he has continuously resided in the United States for about 55 years, where he maintains family and community ties. Also, he receives ongoing treatment for his medical conditions through Medicare. Further, the U.S. Department of State’s current travel advisory for Nicaragua states: “Medical care is very limited, particularly outside of Managua. Basic and emergency medical services are available in Managua and in many of the smaller towns and villages. However, treatment for many serious medical problems is either unavailable or available only in Managua. Ambulance services, where available, provide transportation and basic first aid only. More advanced medical equipment, and some medications and treatments, are not available in Nicaragua ... Payment for medical services is typically done on a cash basis, although the few private hospitals will accept major credit cards for payment. U.S. health insurance plans are generally not accepted in Nicaragua[] ... ” *Travel Advisory, Nicaragua*, issued January 11, 2013. Accordingly, the AAO finds, in the aggregate, the applicant’s spouse would suffer extreme hardship upon relocation to Nicaragua.

As the applicant has shown her spouse would suffer extreme hardship, she has established that denial of the present waiver application “would result in extreme hardship”, as required for a waiver under section 212(i) of the Act.

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,

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 stated 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, family ties, steady employment, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentations of her identity and the presentation of fraudulent documents.

Although the applicant's violation of immigration laws 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 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.

ORDER: The appeal is sustained.