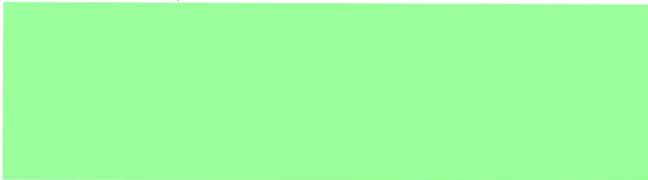


(b)(6)

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

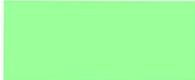


U.S. Citizenship
and Immigration
Services



Date: APR 24 2013

Office: TEGUCIGALPA

FILE: 

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); Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras. 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 Costa Rica 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 seeking to procure admission to the United States through fraud or misrepresentation. On November 29, 2003, the applicant tried to enter the United States with a backdated Costa Rican entry stamp in his passport in an attempt to conceal the fact that he had overstayed his visa on a prior visit to the United States. In addition, the applicant was found to be inadmissible to the United States pursuant to 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. The applicant entered the United States in February 2004 without inspection, and remained in the United States until August 7, 2010, a period of more than one year.¹ The applicant does not contest the findings of inadmissibility, but rather seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife.

The field office director concluded that the applicant 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. *See Decision of the Field Office Director*, dated June 14, 2012.

The record contains the following documentation: a brief filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion; statements from the applicant's spouse; financial documentation; medical and psychological documentation for the applicant's spouse; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

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, in pertinent part:

¹ The field office director, in the decision dated June 14, 2012, states that the applicant accrued also unlawful presence in the United States between September 24, 2002 (after he overstayed) and November 9, 2003. However, the record indicates that the applicant was not present in the United States this entire period and only accrued approximately one month of unlawful presence in the United States prior to his entry without inspection in February 2004. The applicant entered the United States on March 3, 2002 and departed on March 20, 2002, within the period of his authorized stay. On April 5, 2003, the applicant reentered the United States and was authorized to stay in the United States until October 5, 2003. The record indicates that the applicant remained in the United States beyond the date of his authorized stay, and did not depart until November 9, 2003.

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....

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

A waiver of inadmissibility under section 212(i) of the Act and under section 212(a)(9)(B)(v) 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 U.S. citizen spouse 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-Salcidov. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel contends that the applicant's spouse is suffering psychological hardship due to her separation from the applicant. The record includes a psychological evaluation for the applicant's spouse dated June 26, 2012 which states that the applicant's spouse is suffering from Major Depressive Disorder. The evaluation notes that while the applicant's spouse's depression predates her separation from the applicant, her depressive state has been severely exacerbated by the separation from her spouse. The evaluation states that the separation has been devastating for the applicant's spouse and has caused her extraordinary hardship, particularly due to the recurrence of her Major Depressive Disorder which is quite severe, causing multiple difficulties: ongoing sadness, anhedonia, appetite disturbance, sleep disturbance, concentration difficulties, sustained fatigue, psychomotor retardation, and morbid thinking accompanied by withdrawal from others. The record further includes a letter from a psychologist dated June 28, 2011, which states that the applicant's spouse received periodic counseling at the [REDACTED] since June 2007, and that she recently returned to therapy at the institute as she became very depressed following her separation from the applicant.

Counsel contends that the applicant's spouse will suffer hardship if the applicant's waiver is not approved. The applicant's spouse states that she is employed as a Spanish dual language teacher in [REDACTED] a position that she has held since 2002. Counsel states that the applicant's spouse currently earns \$58,597 per year. Counsel also states that the applicant's spouse is in debt with student loans, private bank loans, cars loans, and other miscellaneous costs of living, and that bank statements indicate that she has an account alert history, with at or near a zero balance warnings several times per month. In a statement dated July 9, 2012, the applicant's spouse indicates that she has about \$35,000 in student loans, \$20,000 in credit card debt, a bank loan of \$9,000, and a car loan of nearly \$25,000. The record includes financial documentation to indicate the extent of the applicant's spouse's debt. The record further indicates that the applicant's spouse incurs further expenses traveling to Costa Rica to be with the applicant. In addition, the record indicates that the applicant's spouse was due to deliver the couple's first child in February, 2013. The evidence in the record established that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence.

Counsel also states that the applicant's spouse will suffer medical hardship if the applicant's waiver is not approved. Evidence in the record indicates that the applicant's spouse suffers from hammertoe, which will require surgery to correct, and also from irritable bowel syndrome. In addition, as noted above, the applicant's spouse was pregnant, due to deliver in February 2013.

The record establishes that if the waiver application were denied, the applicant's spouse would experience psychological and financial hardship, and that she would experience additional financial and emotional hardship in the absence of the applicant with the birth of the couple's first child. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

The record further indicates that the applicant's spouse would experience hardship were she were to relocate to Costa Rica to be with the applicant. The record indicates that the applicant's spouse born in Spain, has resided in the United States since she came to Puerto Rico in 1985. The applicant's mother and siblings are all U.S. citizens, and reside in the United States. Although the applicant is fluent in Spanish, she has never resided in Costa Rica, and is unfamiliar with the culture and customs of that country. The record indicates that the applicant's spouse has developed close community ties to the United States, and the applicant's spouse states that she is active in her professional community, developing a strong bond with her co-workers and students. The applicant's spouse also states that she will suffer financial hardship if she relocates to Costa Rica as she will lose her teaching position, as well as her medical insurance to cover herself and her newborn child.

Based on the evidence on the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Costa Rica to reside with the applicant.

The AAO thus 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 she 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, "balance 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 U.S. citizen spouse and newborn child would face if the applicant were to reside in Costa Rica, regardless of whether they accompanied the applicant or remained in the United States; the fact that the applicant resided in the United States for almost 10 years; the applicant's apparent lack of any criminal record; and letters of reference written on behalf of the applicant. The unfavorable factors in this matter are the applicant's attempt to procure admission to the United States through fraud or misrepresentation and the applicant's unlawful presence in the United States.

The immigration violations committed by the applicant are 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 appeal is sustained. The waiver application is approved.