



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **AUG 20 2013**

Office: PHOENIX [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:

[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,

[Handwritten signature]

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, denied the waiver application and 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The record reflects that in 1977 the applicant attempted to enter the United States using a lawful permanent resident card belonging to another person. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest the inadmissibility finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with her lawful permanent resident spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated April 12, 2011.

On appeal, filed on May 10, 2011, and received by the AAO March 20, 2013, counsel for the applicant contends that the Service erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief. The record contains declarations from the applicant's spouse and other family members; medical records for the applicant's spouse; a letter from the applicant's employer; and financial information. 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 that:

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. The applicant's 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

Counsel states that the applicant and her spouse have been married since 1975 and has children and grandchildren in the United States. She contends the spouse suffers from heart disease and has anxiety and stress over the applicant's situation. Counsel states that the applicant's spouse is retired and that the applicant supplements their income so they could buy a home. She also states that the applicant's family all live close to each other and that if the spouse relocated to Mexico separation would be unbearable for him. Counsel notes that the U.S. Department of State has issued warnings about Mexico being a dangerous place to live and she states that the applicant's spouse is afraid something will happen to them in Mexico.

The applicant's spouse states that he would suffer tremendously without his wife of many years as they share companionship, she provides care for him, and she goes with him to medical appointments since he can no longer care for himself. In her declaration a daughter states that the parents have been together since 1974 and together raised a family. She states that her father would suffer medical hardship without the applicant because she assures he takes his medication and accompanies him to his doctor. The daughter states that her father suffers high blood pressure, hearing loss, vision problems, has an ulcer, and suffered mini strokes in 2009, and that in Mexico he would not receive the same quality health care he receives in the United States. She states that if her father goes to Mexico he could lose his social security benefits, it would be impossible for a man of his age to get a job, and he would have no income on which to live. She asserts that without the applicant her father could experience struggles, suffer depression, and have frightening memories, a sense of danger, and a feeling of being disconnected.

The AAO finds that the record establishes that the applicant's spouse would experience extreme hardship due to separation from the applicant. In reaching this conclusion, it notes the spouse's emotional and medical condition. The record establishes that the applicant and her spouse have been married nearly 40 years, raising an extended family of children and grandchildren in the United States, and that the applicant's spouse would suffer emotionally from the loss of long-time companionship. The record includes copies of medical records for the applicant's spouse from 2007 and 2009 that contain medical terminology and abbreviations that are not easily understood, and do not contain a clear explanation of the current medical condition of the applicant's spouse. However, the records state he has a history of cerebrovascular accidents (CVAs) and coronary artery disease, and given the spouse's age of 82 it is reasonable to conclude that medical conditions are potentially serious, requiring the applicant's physical presence for assistance.

The AAO also finds the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to reside with the applicant. The applicant's daughter states a fear of quality medical care in Mexico for her father. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the

qualifying relative would relocate, are relevant factors in establishing extreme hardship. As noted above, although medical records for the applicant's spouse do not contain a clear explanation of his current medical condition, given his age and medical history it is reasonable to conclude that his medical conditions are potentially serious. Further, the U.S. Department of State indicates that adequate medical care can be found in major cities in Mexico, but training and the availability of emergency responders may be below U.S. standards. It also notes that care in more remote areas is limited and standards of medical training, patient care, and business practices vary greatly. See *Travel Information-U.S. Department of State*, dated February 15, 2013.

Counsel and the applicant's spouse assert a fear of the violence in Mexico. The record reflects that the applicant is from [REDACTED]. A U.S. Department of State travel warning includes [REDACTED] suggesting an avoidance of non-essential travel to portions of the state and in cities including Acapulco to exercise caution, stay within tourist areas, and travel only during daylight hours. See *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico*, July 12, 2013.

Counsel also asserts that the spouse has extensive family ties in the United States, which would make separation unbearable for him. The record establishes that the applicant's spouse has resided in the United States nearly 40 years and his children and grandchildren living nearby.

The record reflects that the cumulative effect of the qualifying spouse's family ties and length of residence in the United States and his health and safety concerns, were he to relocate to Mexico, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, her qualifying spouse would suffer extreme hardship if he returned to Mexico with her.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

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, 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 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 this matter are the hardships the applicant's lawful permanent resident spouse and children would face if the applicant is not granted this waiver, the applicant's support from family and friends in the United States, her gainful employment and payment of taxes, and her apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's misrepresentation when attempting to enter the United States in 1977.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, 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 his burden and the appeal will be sustained.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.