



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE:

**AUG 29 2013**

OFFICE: SAN FRANCISCO, CA

[Redacted]

IN RE:

[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,

f. Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Francisco, California, 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 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 a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks 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.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated January 29, 2013.

On appeal counsel contends that the adverse decision is based on an incorrect application of the law and failure to consider all the facts presented and all the evidence in the record. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received February 26, 2013

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; hardship declarations; medical and psychological records; employment, tax and financial records; country conditions documents for Mexico; letters of character reference, support and concern; marriage and birth records and family photos; and documents related to the applicant's criminal record and inadmissibility. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

The record shows that the applicant entered the United States without inspection in or about August 1982. On or about April 14, 1995, the applicant presented a false Puerto Rican birth certificate in an attempt to obtain a United States passport. For this act, the applicant was convicted on January 10, 1996 of fraud and related activity in connection with an identification document. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the

applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.<sup>1</sup>

A waiver of inadmissibility under sections 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 and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-Morales*, 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*,

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<sup>1</sup> The record shows that the applicant has been convicted in the United States District Court, Northern District of California, of one count of fraud and related activity in connection with an identification document, in violation of 18 U.S.C. § 18:1028(a)(4). He was sentenced on May 30, 1996 to a penalty fee of \$25, supervised probation for three years, and 100 hours of community service. The field office director did not address whether this conviction is for a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and if so, whether it meets the petty offense exception of section 212(a)(2)(A)(i)(I)(ii)(II) of the Act. However, assuming for purposes of this appeal that the applicant *is* inadmissible under section 212(a)(2)(A)(i)(I) of the Act, because we find that he has demonstrated eligibility for a waiver of his section 212(a)(6)(C)(i) inadmissibility under section 212(i) of the Act, and meeting the waiver requirements under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), we would also find that the applicant merits a waiver of section 212(a)(2)(A)(i)(I) inadmissibility.

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 spouse is a 36-year-old native and citizen of the United States. She maintains that if a waiver is not granted, she will suffer extreme hardship of an emotional and economic nature. The record shows that the applicant and his spouse have been together since 2005, married since 2011, and their son, [REDACTED], was born in 2009. The applicant also has a 23-year-old daughter, [REDACTED], and a 21-year-old son, [REDACTED] from a prior relationship. The record indicates that [REDACTED] has cerebral palsy and resides with the applicant and his spouse approximately four days per week. In addition to her own statements, [REDACTED] records show that the applicant’s spouse has a history of mental health-related conditions including depression, post-traumatic stress disorder, adjustment disorder, and postpartum depression. She is currently being treated by [REDACTED] for a diagnosis of anxiety disorder, major depression, and panic disorder, and she also displays symptoms of agoraphobia. She has also been evaluated by [REDACTED] who writes that the applicant’s spouse’s mental health and well-being is expected to decline if the applicant is removed, thus intensifying her symptoms to a degree that would cause significant clinical impairment in her daily functioning.

The applicant's spouse states that she relies financially on the applicant, has not received a pay increase in more than four years, and would be unable to support herself and her son on her salary alone. Employment and tax-related documents have been submitted for the record, as has a written budget and corroborating billing/expense documents. These confirm that the applicant currently contributes more than 45% of the household's combined income, which would be lost in the event of his removal. Additionally, the applicant's spouse indicates that while her employer does not offer health insurance, the applicant's employer provides health insurance coverage for the entire family, which they would lose if the applicant is removed. Corroborating insurance cards have been submitted for the record.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including both the emotional/psychological impact and the economic impact of separation as documented in the record. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse indicates that she was born and raised in the United States, has never resided in Mexico, does not speak or understand the Spanish language, has no family or other ties to Mexico and would have a very difficult time adjusting to an unfamiliar country and culture. She echoes this for her young son whom she fears would additionally suffer from an educational system that ranks far below that in the United States and with regard to which corroborating country conditions reports have been submitted. The applicant's spouse and her parents write that they have an exceptionally close bond to one another, particularly since the applicant's spouse's only sibling, [REDACTED] passed away in 2000. Therapeutic and medical records show that the applicant's spouse has become progressively more responsible for the daily care and support of her parents who have no other children, no other relatives living nearby, and who suffer a number of serious medical conditions including diabetes, chronic pulmonary disease, atherosclerosis of the aorta, osteoarthritis of the knee, asthma, and major depression. The applicant's spouse indicates that she would be extremely worried about her parents were she to relocate and would feel extremely guilty for abandoning them when they have difficulty taking care of themselves, further exacerbating her psychological conditions. She explains that relocation would result in the loss of her steady employment and income and she would be unable to secure employment in Mexico as she cannot communicate in Spanish. The applicant's spouse expresses great concern for her safety in Mexico, and a number of country conditions reports have been submitted for the record. The AAO has also reviewed the U.S. State Department's current *Mexico Travel Warning*, dated November 20, 2012, in which U.S. citizens are warned that crime and violence are serious problems throughout Mexico and can occur anywhere. The country conditions reports do not support any specific threat to the applicant's spouse, and it is not clear that she would relocate to areas with the greatest reported violence. Nevertheless, we will give some weight to her fears for her safety when considering that hardship factors in the aggregate.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her adjustment to a country in which she has never resided, is unfamiliar with the culture, and does not speak or understand the language; her lifelong residence in the United States; her close family ties in the United States, particularly to her mother and

father, both of whom have serious medical conditions and for whom she provides daily care and support; her serious psychological conditions and the likely emotional/psychological impact of relocation; her steady employment in the United States and longtime community ties; and her stated economic, employment, educational, medical, and safety concerns about Mexico. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, 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 favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family ties to the United States, particularly to his three U.S. citizen children, one who suffers from cerebral palsy and resides with the applicant and his spouse four days per week, and his extended family ties to his spouse's parents who attest to his good moral character and essential presence in the community; his lengthy steady employment for decades and payment of taxes related thereto; and his lack of any criminal convictions beyond that in 1996 related to his inadmissibility. The unfavorable factors are the applicant's immigration violations, which include his attempt to obtain a U.S. passport by presenting a false Puerto Rican birth certificate, his related criminal conviction, and his lengthy period of unauthorized employment in the United States. Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(i) of the Act, the AAO finds that a favorable exercise of discretion is warranted

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.