



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: FEB 08 2013 Office: CIUDAD JUAREZ (ANAHEIM)

FILE: [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 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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Anaheim International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact.¹ The record indicates that the applicant is married to a U.S. citizen and is the mother of three U.S. citizen children. She 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 with her spouse and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 17, 2012. In the same decision, the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) solely based on the denial of the Form I-601.

On appeal, the applicant, through counsel, states the applicant's denial of admission will result in extreme hardship to her spouse. *Form I-290B, Notice of Appeal or Motion*, dated March 15, 2012. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, her husband, their son, mother-in-law, and other family members in English and Spanish²; medical documents for the applicant's mother-in-law; business documents; household and utility bills; financial documents; documents pertaining to the applicant's removal proceedings; and country-conditions documents for Mexico. The entire record was reviewed and considered, with the exception of Spanish-language documents, in arriving at a 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

¹ The applicant was initially found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(9)(C) of the Act; however, the Field Office Director determined that because the applicant has remained outside of the United States for over 10 years, she is no longer inadmissible under those sections of the Act.

² Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's husband and other documents are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 husband 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 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.

In the present case, the record indicates that in 1995, the applicant entered the United States without inspection. In May 1998, the applicant departed the United States. On July 1, 1998, and July 3, 1998, when the applicant was apprehended attempting to enter the United States by presenting a border crosser card in another individual's name, she was expeditiously removed. On July 10, 1998, the applicant was apprehended after attempting to enter the United States without inspection and she was returned to Mexico. On November 18, 1998, an immigration judge ordered the applicant removed *in absentia* from the United States. On an unknown date, the applicant entered the United States without inspection and returned to Mexico on August 9, 2000. Based on the applicant's misrepresentations, the AAO finds that she is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only

qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Describing his hardship should he join the applicant in Mexico, in his declaration dated April 13, 2012, the applicant's husband states he would have difficulty finding employment in Mexico because there is no need for landscapers in Mexico, he would earn less than he earns in the United States, and it would be difficult to survive. A document in the record establishes that the applicant's husband runs a gardening business. The applicant's husband fears he will not earn enough money to survive or to travel to the United States to visit his 72-year-old mother, a lawful permanent resident of the United States. He claims that he would suffer being separated from his mother, because he is very close to her, and he worries that her "health will worsen." Medical documentation in the record establishes that the applicant's mother-in-law has hepatitis C; she had liver cancer and a liver transplant in July 2006. The documents also show that the applicant's mother-in-law "enjoys near-normal liver tests" but she has recurrent hepatitis C infections.

The applicant's husband states he does not want their children to grow up in Mexico, because it is dangerous and he wants them "to have opportunities and to be successful." In her declaration dated April 11, 2012, the applicant states their oldest child cannot move to Mexico because he "will not have access to the same resources and educational opportunities." The applicant claims Tijuana "is very difficult and dangerous" but she lives there to be close to her husband and son in California. The applicant's husband states "Mexicans are struggling because of all of the violence." The AAO notes that on November 20, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations (TCOs)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning also states U.S. citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery," and the increase in "kidnappings and disappearances throughout Mexico is of particular concern." The record establishes that the applicant resides in Tijuana. The Department of State has recommended that caution be exercised "in the northern state of Baja California, particularly at night." The warning indicates that "[t]argeted TCO assassinations continue to take place in Baja California" and "innocent bystanders have been injured during daylight shooting incidents."

Based on the record on a whole, including the applicant's husband's safety concerns in Mexico; his minimal ties to Mexico after living outside of the country for over 30 years; his separation from his family in the United States, including his elderly mother; the possible loss of his business; his limited employment prospects; financial issues; and the emotional effect of raising their children in Mexico, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Mexico.

Concerning the applicant's husband's hardship in the United States, in her appeal brief dated April 13, 2012, counsel claims that the applicant and her husband "rely on each other greatly for support, both emotional and financial." The applicant's husband states it has been "a nightmare" being separated from the applicant for the last eleven and a half years. He states he worries about the applicant and their two children in Mexico. He claims that he has visited the applicant and his children in Mexico "almost every weekend since 2000," and "it pains [him] to be separated from" them. In their statement dated March 13, 2012, the

applicant's brother- and sister-in-law indicate that the applicant's husband is "usually very tired from his trip" after having to wait hours to cross the border.

The applicant's husband states he has remained in the United States for the last eleven and a half years to support their family. He states he owns a landscaping business, he works ten-hour days, six days a week, and he is barely able to "make ends meet." He claims he supports two households, one in the United States and one in Mexico; and his monthly expenses include sending between \$150 and \$200 to the applicant for living expenses, \$550 for their mortgage in Mexico, \$200 for rent in the United States, \$160 for food, and money for their son's expenses. In a statement dated March 12, 2012, the applicant's brother-in-law states they have loaned the applicant's husband money to help pay his expenses. The applicant's brother- and sister-in-law state the applicant's husband "wastes money" maintaining two households and spending money on gas to go to Mexico every weekend. In her statement dated March 12, 2012, the applicant's mother-in-law states her son cannot progress economically because he is supporting two households. The applicant claims that she cannot work in Mexico because she has no one to help her take care of their youngest children. The applicant's husband states he rents a room from his aunt while their oldest son, who he only sees once or twice a week because of his work schedule, resides with the applicant's mother-in-law. He states that it "hurts" him to not be able to see his oldest son more often.

The applicant's mother-in-law states this situation is stressful for her grandson, Bruno, because he is separated from his mother and siblings. The applicant's husband states their son has "suffered the most," but he "deserves to be taken care of and to receive care and affection from his mother and father." The applicant states their oldest son is "very quiet and reserved," and when he is asked what his "biggest wish" is it is for his family to be together. In his undated letter, the applicant's oldest son, Bruno, states the applicant's immigration situation has affected his family and he does not want "to suffer as a family."

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically his emotional and financial issues, and the effect of their son's hardship on his emotional and mental state, the record establishes that the applicant's husband would face extreme hardship if he remained in the United States in her absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

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-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 adverse factors in the present case include the applicant's entries without inspection, misrepresentation, and unlawful presence. The favorable and mitigating factors are the applicant's U.S. citizen husband and children, the extreme hardship to her husband if she were refused admission, her good moral character as described in several letters of support, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

The AAO notes that the Field Office Director denied the applicant's Form I-212 in the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(i) of the Act, it will withdraw the Field Office Director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

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(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the [Secretary] has consented to the aliens' reapplying for admission.

On November 18, 1998, the applicant was ordered removed from the United States. As such, she is inadmissible under section 212(a)(9)(A) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

ORDER: The appeal is sustained.