



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 03 2013** Office: TUCSON, AZ

[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 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
Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The applicant is a native and a 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and child.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated April 13, 2011.

On appeal, counsel asserts that director has overlooked the fact that the applicant has established extreme hardship to his spouse. *See Form I-290B, Notice of Appeal or Motion*, dated April 13, 2011. The applicant through his counsel submits additional evidence for consideration.

The evidence of record includes, but is not limited to: counsel's letter, statements from the applicant's spouse, family and friends, medical documentation for the applicant's spouse including psychological evaluations, financial documents, country-conditions evidence for Mexico, copies of relationship and identification documents, and family photographs. The entire record was reviewed and all relevant evidence considered in reaching 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.

The record indicates that the applicant entered the United States in October 2002 by knowingly and willingly presenting an expired border crossing card while deliberately concealing the cut-corner of the card with his thumb. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act provides:

- (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 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. 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).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as factors 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 hardships to the applicant's child will not be separately considered, except as they may affect the applicant's spouse.

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, 631-32 (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, "[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 *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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant supports his spouse emotionally and financially, and without the applicant, her life would be "adverse[ly]" affected. Counsel asserts that major changes in the applicant's spouse's life, such as separation or moving to a different country, may cause her to "become emotionally vulnerable and place her at a very high risk" for "psychological impairment." Counsel states that the applicant's spouse has a pending claim for her medical bills totaling more than \$66,000, and if she were to move to Mexico, she would "lose her civil car accident claim." A letter from a lien holder corroborates the outstanding amount of her medical bills. Counsel lists safety concerns, inability for the applicant's spouse to obtain emergency care, inability of the applicant's spouse to complete her college education, and job shortages as issues with which the applicant's spouse would face, should she relocate to Mexico.

The applicant's spouse states that she was in a car accident in October 2009 that "severely ruptured [her] spine, changing [her] life forever." The record indicates that she was in another accident in 2011. She had surgeries in June 2010 and May 2011 to reconstruct her spine. Medical evidence corroborate her treatments for lumbar disc displacement and indicates that she has recurring back pain radiating to her legs. According to [REDACTED], "she may need artificial disc replacement in the future." She also receives treatment for depression and anxiety. The applicant's spouse states that she cannot care for herself and needs the applicant to drive her to medical appointments, run errands, take care of the house, shop for groceries; he also must care for her, their daughter, and their pet. She experiences "insomnia, decrease in appetite, muscle and joint pain, excessive tiredness and irritability," which further limits her ability to care for herself and her family. She also states that she has not been able to work full-time, which limits her ability to provide for her family and pay for her college tuition.

In her May 2011 psychological evaluation, Dr. [REDACTED] states that the applicant's spouse is experiencing "multiple stressors," which pose a "serious threat" to her emotional well-being. Dr. [REDACTED] states that disrupting the applicant's spouse's treatment is "likely to cause further deterioration" of her condition; and it would be in the best interest of the applicant's spouse if the applicant remains in the United States with her to "prevent her from undergoing further psychological decompensation."

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship if she were to separate from the applicant. In reaching this conclusion, we note the applicant's spouse's medical and psychological conditions. The record establishes that the applicant's spouse has ongoing medical problems and needs the applicant's assistance. The applicant's spouse's medical condition physically limits her ability to care for herself and their daughter. She also needs the applicant for daily household chores and transporting her to her medical appointments. Furthermore, the applicant's spouse is experiencing multiple stressors, and the stress resulting from their separation would negatively impact her emotional well-being. She needs the applicant's support to prevent her from further decompensating psychologically. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship, should she separate from the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico. We note that the applicant's spouse receives on-going treatments for her injuries that resulted from car accidents. Medical evidence establishes that despite surgery, she continues to suffer from low back pain and right leg pain; she may need artificial disc replacement in the future. She has a substantial amount of medical expenses. She has a pending legal claim for her damages and there is a lien against the settlement amount she would get from her civil claim. Relocating and disrupting her care in the United States would have a negative impact on her recovery and ultimately in the success of her civil litigation. The respondent in her legal claim could refuse to financially compensate for her medical care or for medical complications occurring after relocation, because the respondent's insurance company

may not cover her medical bills outside of the United States. Moreover, the cost of healthcare would differ in each country, which would affect her settlement amount. In addition, her civil litigation could last for years; with her physical limitations, it would be difficult for her to travel for depositions and court appearances. The AAO also notes that counsel's safety concerns in Mexico are corroborated by the U.S. Department of State in their travel warning for Mexico, last updated on November 20, 2012. According to that report, roadblocks by transnational criminal organizations in various parts of Mexico in which both local and expatriate communities have been victimized have increased. The report mentions particular concerns for Sonora, to where the applicant and his spouse would be returning. According to the report, "Sonora is a key region in the international drug and human trafficking trades, and can be extremely dangerous for travelers." See http://travel.state.gov/travel/cis_pa_tw/tw/tw_5815.html. Traveling through the region to appear for her court proceedings would expose the applicant's spouse to dangerous conditions. The AAO concludes that considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship, should she relocate.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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, 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 factor in the present case is the applicant’s fraud or material misrepresentation to obtain admission to the United States, for which he now seeks a waiver. The mitigating factors include the applicant’s U.S. citizen spouse and child, the extreme hardship to his spouse if the waiver application is denied, and the absence of a criminal record for the applicant.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.