



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **JAN 03 2013** Office: SAN BERNARDINO, CALIFORNIA [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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, California, 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 willfully misrepresenting a material fact to obtain an immigration benefit. The record indicates that the applicant is the son of a lawful permanent resident of the United States, married to a Mexican citizen, and the father of two U.S. citizen children. He is the beneficiary of an approved Petition for Alien Worker (Form I-140). 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 his mother, spouse, and children.

The Field Office Director found that the applicant had 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 December 8, 2011.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in denying the applicant's waiver application. *Form I-290B, Notice of Appeal or Motion*, received December 28, 2011. Additionally, counsel claims that the applicant submitted "ample evidence" that his lawful permanent resident mother would suffer extreme hardship. *Id.*

The record includes, but is not limited to, counsel's appeal brief and brief in support of the Form I-601, statements from the applicant and his mother, medical documents for the applicant's mother, employment documents for the applicant, and financial documents. The entire record was reviewed and considered 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 documentation, or admission into the United States or other benefit provided under this Act is inadmissible:

.....

- (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

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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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 application, the record indicates that on January 20, 1998, the applicant filed a Form I-140 claiming that he was going to work as a digital artist creating 3D computer characters. However, during his adjustment interview on March 17, 2009, the applicant admitted that he has limited computer skills, he cannot create 3D computer characters, and the Form I-140 was determined to be fraudulently filed. Based on the applicant’s misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

Describing her hardship should she join the applicant in Mexico, in her declaration dated April 30, 2009, the applicant’s mother states her ten children and thirty-six grandchildren all reside in the United States, including two of her children who “are totally disabled.” She claims that other than a brother who suffers from osteoporosis and high blood pressure, she has no family members in Mexico. She states that she has not resided in Mexico in 19 years, and leaving the United States will “uproot” her from her life as she knows it.

The applicant’s mother states that because her other children cannot help support her, she would have to join the applicant in Mexico, and he would be unable to support her there. In his declaration dated April 30, 2009, the applicant claims that he will be unable to obtain decent employment in Mexico that would allow him to support his mother. Moreover, the applicant’s mother states she suffers from several medical conditions, including a stroke, cervical schwannoma, carotid insufficiency, hypothyroidism, arthritis, hypertension, memory loss, and depression. She uses a walker and cane. Medical documentation corroborates the applicant’s mother’s claims. The applicant’s mother claims treatment for her medical conditions in Mexico is not “readily available,” and she will be unable to afford it. Additionally, in his appeal brief filed January 27, 2012, counsel claims country conditions in Mexico need to be considered. 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 rise in “kidnappings and disappearances throughout Mexico is of particular concern.” The record establishes that the applicant and his mother are from Michoacán. The Department of State has recommended that non-essential travel should be deferred to Michoacán, as “[a]ttacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred” throughout the state.

Based on her safety concerns in Mexico; her minimal ties to Mexico after living outside of the country for many years; her severe medical issues and possible disruption of her treatment; her advanced age; her separation from her family in the United States, including her two children who are disabled; and financial issues, the AAO finds that the applicant’s mother would suffer extreme hardship if she were to join the applicant in Mexico.

Regarding the hardship caused by their separation, the applicant’s mother states she resides with the applicant, he has supported her since 2008, and because she is disabled, she cannot earn a living. In counsel’s brief in support of the Form I-601, counsel claims that without the applicant’s assistance, his mother will have to apply for government assistance in order to support herself. The applicant states he financially supports his mother and takes care of her living expenses and medical needs. Documentation establishes that the applicant is employed as a lawn service manager, he and his wife claimed an income of \$49,119 in 2008, and they list his mother as a dependent on their income tax returns. The applicant’s mother claims her other children cannot support her because they have other responsibilities or are having financial difficulty. Moreover, counsel claims that the applicant’s mother’s emotional hardship needs to be considered.

The AAO finds that considering the applicant’s mother’s hardships in the aggregate, specifically her financial and medical issues, and reliance on the applicant and his family for her caretaking, the record establishes that the applicant’s mother would face extreme hardship if she remained in the United States in his 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

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(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-Moralez, 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 entry without inspection, his misrepresentation, and his unlawful presence. The favorable and mitigating factors are the applicant's lawful permanent resident mother and U.S. citizen children, the extreme hardship to his mother if he were refused admission, his extensive family ties to the United States, the applicant's efforts to legalize his status in the United States, and his lack 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.

ORDER: The appeal is sustained. The waiver application is approved.