

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: JUN 04 2013 OFFICE: ANAHEIM, CA

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:

SELF REPRESENTED

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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 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 having procured a visa to the United States through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative filed by his U.S. Citizen child. 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 lawful permanent resident spouse and U.S. Citizen child.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated October 3, 2012.

On appeal, the applicant submits a statement from his spouse, affidavits from family members, a report on Mexico, medical records, police reports, a list of family members in the United States, an article on generalized anxiety disorder, photographs, and a death certificate. In the statement, the applicant's spouse contends she will experience emotional and financial hardships if her separation from the applicant continues. The spouse additionally asserts she cannot relocate to Mexico due to the violence, as well as separation from family members in the United States.

The record includes, but is not limited to, the documents listed above, other applications and petitions, statements from the applicant's spouse and family members, evidence of birth, marriage, residence, and citizenship, articles on Mexico, and photographs. 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:

- (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.

In the present case, the record reflects that the applicant failed to disclose that he had been deported in 1965 when he obtained a nonimmigrant visa in 2000. The applicant admitted in a sworn statement that he did not disclose his 1965 arrest for stealing melons, or his deportation to Mexico, because he was afraid he would not obtain the visa. *Sworn statement*, July 12, 2010. Inadmissibility is not contested on appeal. 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. The applicant's qualifying relative for a waiver of this inadmissibility is his lawful permanent resident spouse.

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).

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. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (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.

The applicant’s spouse states that she and the applicant have been married for 39 years, and that they have always been together. She asserts that given this current separation, she has become depressed, anxious, and despondent. Medical records are submitted in support. The applicant’s spouse moreover claims that she cannot meet her financial obligations without the applicant’s income. She adds that the phone bills and travel expenses would be too costly given her limited income, and that consequently she would miss the applicant even more.

The spouse further states it would be too dangerous to relocate to Mexico given the country conditions. A police report is included on appeal, indicating the applicant was robbed in October 2012 in Baja California, Mexicali, Mexico where he resides. The spouse adds that she would have to leave several family members who now reside in the United States if she had to relocate to Mexico. A list of family members as well as letters is submitted in support.

The record establishes that the applicant and his spouse have been married since 1972. They are both over 60 years old. In addition, the record establishes that the applicant and his spouse have resided together for many years prior to the present separation which only occurred recently when the applicant’s spouse immigrated to the United States. The record reflects that the applicant’s spouse was seen at the Guadalupe Medical Center in Las Vegas for headaches and depression and was prescribed Alprazolam, a medication used to treat anxiety and panic disorders. Based on a

thorough review of the record, and in particular considering the length of the marriage between the applicant and his spouse and the additional emotional hardship separation brings about in a long term relationship, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship.

Furthermore, the record reflects that the applicant's spouse would experience extreme hardship upon relocation to Mexico. The applicant has provided evidence demonstrating that he has recently been the victim of crime. Furthermore, the spouse's contentions on the country conditions in Baja California, Mexicali, Mexico, are supported by the U.S. Department of State's travel warning, which indicates:

You should exercise caution in the northern state of Baja California, particularly at night. For the one-year period ending July 2012, the number of murders in Mexicali increased by 43%, from 127 to 181, over the preceding year. The number of murders in the city of Tijuana was 351 for the same period. In the majority of these cases, the killings appeared to be related to narcotics trafficking. Targeted TCO assassinations continue to take place in Baja California. Turf battles between criminal groups resulted in assassinations in areas of Tijuana frequented by U.S. citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours. Twenty-five U.S. citizens were the victims of homicide in the state in the 12-month period ending July 2012.

Travel Warning: Mexico, U.S. Department of State, November 20, 2012. The applicant has additionally established that relocation will entail separation from a significant number of family members who reside in the United States.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, safety-related, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

Considered in the aggregate, the applicant has established that his lawful permanent resident spouse would face extreme hardship if the applicant's waiver request is denied.

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.

The negative factors include the applicant's misrepresentation as well as his 1965 deportation. The positive factors include the extreme hardship to the applicant's spouse, some evidence of hardship to the applicant, the lack of a criminal history since the 1960's, and evidence of good moral character as stated in letters from family members.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. 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.

ORDER: The appeal is sustained.