



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: JUN 27 2013 Office: WASHINGTON FIELD OFFICE [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

Maria Feli

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Washington Field Office Director, Fairfax, Virginia. 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The record reflects that the applicant attempted to enter the United States by presenting the birth certificate of a United States citizen, was returned to Mexico, and later procured a Border Crossing Card, failing to indicate that she had previously attempted to enter the United States by presenting a birth certificate that did not belong to her. The applicant does not contest this finding of inadmissibility, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The record reflects that the applicant's false claim to U.S. citizenship was made in 1994, prior to the 1996 enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. The provisions of Section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship were added to the Act as part of IIRIRA. The Act currently allows no waiver for false claims to U.S. citizenship. However, if the false claim was made prior to the enactment of IIRIRA, September 30, 1996, it is treated as misrepresentation under section 212(a)(6)(C)(i) of the Act and the alien is eligible to apply for a waiver under section 212(i). *See Memorandum by Lori Schialabba, Associate Director, RAIO, Donald Neufeld, Associate Director, Domestic Operations Directorate, Pearl Chang, Acting Chief, Policy and Strategy, dated March 3, 2009.*

The field office director found that the applicant failed to establish that her qualifying spouse would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director dated July 18, 2012.*

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by not taking into account the documentation submitted in support of the hardship claim. With the appeal counsel submits a brief; an affidavit from the applicant's spouse; medical information for the spouse and son; school documentation for the applicant's daughter; child care information; financial information for the applicant's spouse; and country information for Mexico. The record also contains letters of support for the applicant. 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 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. The applicant's spouse 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 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*, 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. *Salcido-Salcido v. INS*, 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.

On appeal counsel asserts the applicant’s spouse suffers stress and sleeping problems for which he takes medication. Counsel contends the applicant has a daughter with a learning disability as evidenced by school documentation. Counsel states that the applicant helps the daughter with homework and getting proper care as the applicant’s spouse works full time and would be unable to provide for his daughter’s needs. Counsel contends the applicant has now been diagnosed with Type 2 Diabetes and receives medical treatment, adding to the spouse’s anxiety. Counsel notes that in its denial the Service stated the applicant had not explored day care possibilities for the children, but counsel contends that without the applicant caring for the children the applicant’s spouse could not meet the expenses of day care through private programs or the public schools. Counsel also asserts that the denial focuses on democracy and trade between the United States and Mexico, not crime along the border where the applicant’s spouse would live.

In his affidavit the applicant’s spouse contends that he cannot sleep because of fear that the applicant will not be able to remain in the United States. He states that the applicant makes a small contribution of income, but that he could not afford day care or after school care for the children if the applicant were not here to care for them. He states his employment is expanding so he may be gone for a week at a time, having no one to care for the children, and that he cannot risk quitting his job and finding new employment. He states that Mexico is dangerous and that where the applicant’s family lives drug trafficking is a problem and murder victims are found every day, and he does not want the applicant or their children to be subjected to these dangers.

The record contains documentation that the applicant’s spouse has been prescribed with medication for insomnia. Documentation also shows the applicant’s son has been diagnosed with iron

deficiency anemia and eczema. The record contains information on childcare costs and documentation that the applicant's daughter receives specialized speech related services through her school.

The AAO finds that the record establishes the applicant's qualifying spouse will suffer extreme hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. Counsel and the applicant's spouse assert the spouse has stress and is unable to sleep due to fears of separation from the applicant. The record contains no explanation from a doctor, but shows the applicant's spouse has been prescribed with medication for insomnia and information indicates the medication is also used to treat depression and anxiety.

Although the spouse states the applicant contributes minimal income to the family, the record demonstrates the necessity of the applicant's financial contributions in that without her care for their three children the applicant's spouse would experience extreme financial hardship providing day care or after care services for them. When considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional and financial hardships demonstrate that the qualifying spouse would suffer extreme hardship if he were to remain in the United States without the applicant.

The record also establishes that the qualifying spouse would suffer extreme hardship in the event he relocated to Mexico to reside with the applicant. The applicant's spouse states Mexico is dangerous and he does not want to subject the applicant or children to the danger. The record reflects that the applicant would reside in [REDACTED]. The current U.S. Department of State travel warning for Mexico indicates that due to crime and violence non-essential travel to the state of [REDACTED] should be deferred. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico*, November 20, 2012

The record further establishes that it would be financially difficult for the applicant's spouse, considering his long-term employment, current income, and expenses, to relocate to another country. As such, the record reflects that the cumulative effect of the qualifying spouse's ties to the United States, his length of residence in the United States, safety concerns, and loss of employment and home if he were to relocate, rises to the level of extreme.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States.

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.

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 BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and friends in the United States, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentations to gain entry to the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violation of immigration law, the AAO finds that a favorable exercise of discretion is warranted. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained