



(b)(6)

Date: **MAR 15 2013**

Office: PORTLAND, OREGON

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) and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Portland, Oregon. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States in January 1992, September 1995 and April 2000. The applicant 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 procuring admission to the United States through fraud or misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. The record reflects that when the applicant obtained a B2 visitor visa in 2000 he failed to disclose his marriage to a lawful permanent resident who lived in the United States. The applicant is the spouse of U.S. lawful permanent resident. He seeks a waiver of inadmissibility to remain in the United States with his spouse.

The District Director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated May 28, 2009.

On appeal, the AAO determined the applicant had established that his qualifying relative spouse would experience extreme hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. However, the AAO concluded that the applicant had failed to establish that his spouse would experience extreme hardship were she to relocate to Mexico to reside with the applicant due to his inadmissibility. Consequently, the appeal was dismissed. *Decision of the AAO*, dated February 7, 2012.

On motion, counsel for the applicant submits a brief; a declaration from the applicant's spouse; a psychological assessment of the applicant's spouse; country information for Mexico; and documents for the applicant's son showing he continues to receive special education for a speech condition. The record also contains the applicant's tax returns, a letter from his employer, and letters of support from friends.

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

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 sections 212(i) and 212(a)(9)(B)(v) 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, parent or child of the applicant. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. 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. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 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.

In its decision dated February 7, 2012, the AAO found that the applicant had established extreme hardship to his lawful permanent resident spouse were she to remain in the United States while the applicant resided abroad as a result of his inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that his spouse would suffer extreme hardship were she to relocate to Mexico to reside with the applicant. The AAO found that the applicant had not established that he was from the state of Michoacan rather than Queretaro, or that his family would relocate to Michoacan, where country conditions show drug-related violence is prevalent, rather than Queretaro, where evidence did not indicate the existence of similar violence. The AAO thus found the evidence failed to establish that the applicant's wife and family would face the risk of drug-related crime and violence if they relocate to Mexico. The AAO determined that the psychological evaluation reflecting that the spouse suffers from a depressive disorder pertained largely to anxiety at the prospect of living in the United States without the applicant, but failed to demonstrate that she would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she relocated to Mexico with the applicant. The AAO further determined that evidence failed to demonstrate that the applicant's son's speech condition is serious or requires special services unavailable in Mexico. The AAO determined the record does not reflect that the applicant's wife or children suffer from medical or other condition that could not be treated in Mexico and that generalized evidence of poverty in Mexico failed to establish that the applicant's children would receive an inadequate education there.

On motion, counsel asserts that it would be a hardship for the applicant's spouse to sever family, cultural and financial ties in United States as her entire family apart from distant relatives is in the United States. Counsel asserts that the applicant and spouse would have to sell their home to relocate and given the spouse's education she would have difficulty finding employment in Mexico, whereas in the United States the applicant's earnings allowed his spouse to remain a homemaker. Counsel asserts that by relocating to Mexico the applicant's spouse would lose her parents, siblings and community in the United States plus be emotionally devastated to watch her children suffer the same losses while being worried about their quality of life. Counsel contends that to retain her U.S. residence the applicant's spouse would need to split time between the United States and Mexico. Counsel states that the applicant's spouse has not visited Mexico in many years so no longer knows conditions where her family originated, Michoacan, and knows no one in husband's home state of Queretaro, where there is also drug-related violence. Counsel further asserts that due to the spouse's own lengthy residence in United States it would be a hardship to reintegrate to cultural and economic life in Mexico. Counsel asserts that the applicant's children speak English in school and at home and are not fluent in Spanish, and that one son receives treatment for a speech disorder. Counsel cites submitted country reports in asserting that special education services in Mexico are limited. Counsel notes that the spouse's most recent psychological evaluation focuses on her fears and anxieties about relocating to Mexico and contends that the spouse's compromised mental health is likely to worsen with moving her children from their family, home and community.

The applicant's spouse states that her parents and siblings are in the United States and she has no close family in Mexico. She states that to relocate to Mexico she would have to sacrifice her children's future taking them away from family and friends and putting them in a different school system in a different language than what they have used in study. She states that one son needs special education for speech and cannot get services in Mexico. She states that she fears criminals may target her children because they think the family is rich coming from the United States. She further states that she fears violence in Mexico and has no place to live in Queretaro, having relatives only in Michoacan. She further states it would be difficult to find work for her and the applicant because of their ages and because she has little education. She further states that she helps her mother and father due to their health problems because she lives nearby and is available to help them.

On motion, based on a totality of the circumstances, the AAO concludes that the applicant has established that his lawful permanent resident spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant as a result of his inadmissibility.

The record establishes that the applicant's children, natives and citizens of the United States, are integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to Mexico, particularly in light of one son's educational needs and documentation of a lack of supporting services there, would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were they to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from her children. In addition, the record reflects that the applicant's lawful permanent resident spouse has lived in the United States since 1995 and would have to leave her community, her elderly parents, and siblings, and she would be concerned about her mental well-being, as supported in submitted psychological evaluations, as well as the safety of her family in Mexico.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, on motion the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 favorable factors in this matter are the extreme hardships the applicant's spouse and children would face if they were to relocate to Mexico, community and family ties, payment of taxes, apparent lack of criminal record, letters of support from friends, and the passage of more than 10 years since the applicant's misrepresentation. The unfavorable factors in this matter are the applicant's misrepresentation in order to enter the United States and periods of unlawful presence while in the United States.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that on motion, the applicant has established that the favorable factors in his application outweigh the unfavorable factor. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the motion to reopen will be granted and the waiver application approved.

ORDER: The motion to reopen is granted. The waiver application is approved.