



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

(b)(6)

[Redacted]

DATE: **MAR 25 2013** Office: **SAN FRANCISCO, 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:

[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 Francisco, California, and 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 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). He is the son of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 26, 2013.

On appeal, counsel for the applicant contests the Field Office Director's conclusions, noting that the applicant's mother has recently been diagnosed with colon cancer and that the Field Office Director failed to give proper consideration to evidence in the record supporting extreme hardship. *Form I-290B*, received July 27, 2012. Although counsel noted that additional evidence and a brief would be submitted, as of this date nothing else has been received and the record will be considered complete.

The record contains, but is not limited to, the following documentation: a brief previously filed by counsel for the applicant; statements from the applicant, his mother and the applicant's domestic partner; country conditions materials; a psychological evaluation of the applicant's domestic partner; statements from [REDACTED] dated January 25, 2012, discussing the impact of medical conditions on the applicant and his domestic partner; a statement from [REDACTED] pertaining to the impact of the applicant's removal on the applicant's mother; a prescription printout list of the applicant's mother's medications; and a photograph of the applicant and his domestic partner. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented false documents indicating he was a United States citizen when he attempted to enter the United States in 1993. He was detained, then he admitted his true identity and was charged with drug possession.<sup>1</sup> The applicant was removed to Canada, and

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<sup>1</sup> The applicant was charged with a drug crime and admitted to possession of paraphernalia, a misdemeanor, in 1993. The AAO declines to examine whether the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(II) as any waiver the applicant receives for misrepresentation will cover this basis of inadmissibility as well.

states that he re-entered the United States through San Ysidro, California, sometime shortly after that. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, but is eligible to file for a waiver under section 212(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. Hardship to an applicant or their 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 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*, 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 notes at the outset that the applicant is living with Auto Immune Deficiency Syndrome (AIDS), and as such must take a tightly proscribed regimen of medication and nutrition. While hardship to the applicant himself is not considered in determining extreme hardship, it may be considered for the impact it will have on the qualifying relative, in this case the applicant’s mother. The AAO finds the record to contain sufficient evidence, in the form of medical statements, witness testimony and prescription medication records, to demonstrate that the applicant has AIDS, and that disrupting the continuity of his medical could have a life-threatening impact. This would be particularly so if he is forced to reside in a different living environment where he would be exposed to new illnesses and diseases. Based on these observations, the AAO considers the record to demonstrate that the applicant’s mother would experience a substantial emotional hardship if the delicate medical condition of her son were disturbed, either upon relocation or separation.

The AAO also notes another uncommon emotional impact to the applicant's mother, the amount of time the applicant was forced to wait in order to seek adjustment of status in the United States due to a ban on persons with AIDS, a policy which was only recently abolished. The applicant has now resided in the United States since 1993, and was only able to seek adjustment of status to lawful permanent resident in 2011, 18 years after his arrival.

With regard to hardship upon relocation, counsel for the applicant asserts that the applicant's mother would experience extreme physical and financial hardship. *Brief in Support of Application*, dated February 19, 2012. He explains that the applicant's mother is 74 years old, has been treated for depression since 1999 and that she has recently been diagnosed with colon cancer.

While the record does not contain evidence to show that the applicant's mother has been diagnosed with colon cancer, it does contain documentation supporting the assertion that she has struggled with mental health issues, including a statement from her doctor warning that the applicant's removal to Mexico, due to aggravating circumstances surrounding his medical condition, would have a negative emotional impact on her. The AAO also takes note of her age, her expressed fear of returning to the violent conditions in Mexico and the fact that she would be separated from her other three children who reside in the United States. The record contains country conditions materials corroborating counsel's assertions of the conditions in Mexico, although it is not clear that they would necessarily impact the applicant's mother.

When these factors are considered in the aggregate with evidence of the other common factors documented in the record, the AAO finds that the applicant's mother would experience uncommon hardship rising to the degree of extreme hardship upon relocation.

Counsel notes that the applicant's domestic partner of 17 years will suffer emotional and physical hardship due to the applicant's inadmissibility. However, the AAO may only consider hardship to a qualifying relative. The AAO may give some consideration to the applicant's relationship as a family tie to the United States. In this case, however, impacts to the applicant may not be considered except for the indirect impacts they have on qualifying relatives, in this case, the applicant's mother. The AAO finds it reasonable to accept that the applicant's mother views her son's relationship with his domestic partner as a marriage, and it finds it equally reasonable to expect that she would experience an emotional impact due to her son being separated from his partner. In addition, as discussed above, it is more than likely that the applicant's mother will experience a greater degree of emotional hardship based on the particular conditions of her son, the applicant. When this is taken into consideration with other factors heightening the applicant's mother's mental health, the AAO finds that the record demonstrates the applicant's mother will experience uncommon emotional hardship.

When the emotional hardships due to separation are considered in the aggregate with the common impacts of separation, the AAO finds that they rise to the level of extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship upon relocation or separation, the AAO may now consider whether the applicant warrants a waiver as a matter of discretion.

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 (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-Morales*, 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 AAO finds that the unfavorable factors in this case include the applicant's false claim to U.S. citizenship and conviction of possession of paraphernalia. The factors weighing in favor of a discretionary grant include the applicant's long-term residence in the United States, the presence of the applicant's mother and other immediate relatives in the United States, the extreme hardship the applicant's mother would experience due to the applicant's inadmissibility, the impact on the applicant's family ties, including his long-time relationship with his domestic partner, and the length of time the applicant has resided in the United States without any additional criminal charges to his record. Although the applicant's claim to U.S. citizenship is a serious violation of immigration law, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised.

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Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.