



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

(b)(6)

Date: **MAY 15 2013**

Office: ANAHEIM, CA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 Director, Ciudad Juarez. The matter 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the son of lawful permanent resident parents and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his parents and his child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant's mother contends that since her son's departure from the United States, the family has been suffering extreme hardship, particularly considering the applicant's parents are helping care for the applicant's newborn child and considering country conditions in Mexico.

The record contains, *inter alia*: statements from the applicant; letters from the applicant's parents and sister; a copy of the birth certificate of the applicant's U.S. citizen son; documents from the applicant's former school; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that he lived in the United States from June 2005 until December 2011. The applicant concedes that he first used a B-2 tourist visa to enter the United States when he was fourteen years old, and that he continually renewed the visa in order

to continue living in and going to school in Arizona. The applicant does not contest his inadmissibility, acknowledges knowing that what he did was wrong, and expresses remorse for abusing his visa. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's father, [REDACTED] states that in 2001, four men broke into their home in Mexico and robbed them. He contends that the masked men kept asking about his daughter, but they never found her because she was hiding in the bathroom, and that they tried to take the applicant and his brother with them, but were unsuccessful because a neighbor called the police. According to [REDACTED] he was beaten with rifles and was told that the next time, he would certainly die. [REDACTED] states that he continues to have nightmares about the robbery to this day. [REDACTED] states that his daughter left Mexico and that because of this incident, none of them has any intention of ever going back to live in Mexico. He also states that he and his wife do not have the money to see any specialists in regards to the trauma they suffered. In addition, [REDACTED] contends his son is in danger in Mexico because he comes from an upper middle class family that is envied by others. He states they are a close family and need to be together.

The applicant's mother, [REDACTED] states that they owned a tortilla shop in Mexico and that they may be considered rich in the small village in which they lived. According to [REDACTED] the applicant is now living back in the place where she and her husband will not step foot in because of the robbery that happened. [REDACTED] contends her husband was beaten up so badly that she thought she had lost him. She states they filed a police report, but the case was closed for lack of evidence, so instead, they have submitted letters stating that a police report had been filed, that there had been a case with their file number, and that the applicant has reason to fear for his safety. [REDACTED] contends her son runs the risk of being kidnapped or being forced to act on behalf of drug cartels in Mexico. She states that worrying about her son's safety affects her mental, spiritual, emotional, and physical well-being. She states that the separation from her son has made them grow old, have worry lines, and not eat or sleep. She describes her son's fear as every single moment of the day, "twenty-four seven." Furthermore, she states that she and her husband cannot live in Mexico and their other children will never go back to live in Mexico.

After a careful review of the entire record, the AAO finds that if either of the applicant's parents returned to Mexico to be with the applicant, they would experience extreme hardship. The record contains documentation corroborating [REDACTED] contention that they were robbed at gunpoint in 2001. Furthermore, a letter from the State of Sinaloa's Attorney General's office confirms that a "crime of harm" was committed against [REDACTED] during the robbery and that the investigation was closed due to a lack of evidence. The AAO recognizes not only that the applicant's family was

robbed, but that [REDACTED] was beaten up “in a most grotesque manner” to the extent that [REDACTED] thought he would die from his injuries. *Letter from the Applicant*, dated June 8, 2012. The AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning for parts of Mexico, including Sinaloa, where the applicant was born and is currently residing. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. According to the U.S. Department of State, one of Mexico’s most powerful Transnational Criminal Organizations (TCOs) is based in Sinaloa and all non-essential travel to Sinaloa should be deferred. *Id.* In addition, the AAO acknowledges that [REDACTED] other children all reside in the United States and that returning to Mexico would entail being separated from their other children who reportedly will never again live in Mexico. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant’s parents would experience if either of them returned to Mexico to be with their son is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that if the applicant’s parents remain in the United States without their son, they would suffer extreme hardship. The AAO recognizes the applicant’s and his parents’ contention that the applicant has been approached by a crime syndicate and that he is at risk of being harmed. Considering the applicant and his parents have personally experienced extreme violence when they lived in Mexico, the AAO finds that their fear for the safety of their son, who is living in one of the most dangerous areas of Mexico, goes beyond the hardships ordinarily associated with inadmissibility. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if the applicant’s waiver application was denied is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant’s misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant’s significant family ties to the United States, including his lawful permanent resident parents, U.S. citizen son, and U.S. citizen sister; the extreme hardship to the applicant’s parents if he were refused admission; documentation from the applicant’s former school, showing he graduated from high school in the United States and received several Certificates of Achievement as well as an award for Outstanding Athletic Achievement; and the applicant’s lack of any arrests or criminal convictions.

The AAO finds that, although the applicant’s immigration violation is 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.

**ORDER:** The appeal is sustained.