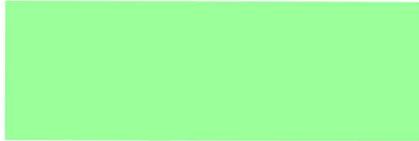


(b)(6)

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



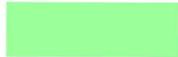
U.S. Citizenship
and Immigration
Services



DATE: NOV 29 2013

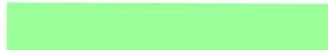
Office: TAMPA

FILE:



IN RE:

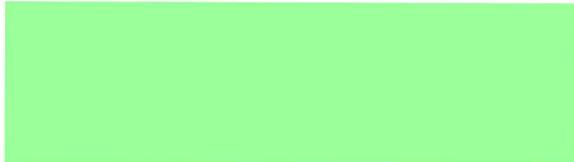
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application and 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 having attempted to procure admission to the United States through fraud or misrepresentation. He has requested a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and children.

The director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated April 15, 2013.

On appeal, counsel for the applicant contends that the Field Office Director erred in finding that the applicant failed to submit sufficient evidence to establish extreme hardship to a qualifying relative. Counsel claims that the Field Office Director failed to consider certain pieces of documentary evidence and failed to weigh all relevant factors demonstrating hardship to the applicant's family. Counsel asserts that the qualifying spouse relies on the applicant for financial and psychological support as well as protection from an abusive ex-husband, that the applicant assists in the care of his spouse's children, and that the qualifying spouse would be unable to take her children to Mexico.

The record includes, but is not limited to: statements from the applicant, his qualifying spouse, and his ex-wife; medical records relating to the applicant, his qualifying spouse, and his stepdaughters; special education records regarding one of the applicant's stepdaughters; a psychological evaluation of the qualifying spouse; financial documentation; country conditions information; records relating to the applicant's criminal history; records relating to the custody of the qualifying spouse's daughters; and photographs of the applicant and his family. 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.

The applicant was found inadmissible under section 212(a)(6)(C) of the Act. The applicant does not contest this finding of inadmissibility on appeal.¹

The AAO also finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. 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-

...

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Although the applicant was a minor when he first entered the United States in 2003, he accrued unlawful presence from the date he turned 18 on October 28, 2007 until he filed a Form I-485 on May 15, 2012.

¹ The record also demonstrates that the applicant was convicted of driving without a license on May 14, 2008, at the age of 18. The Field Office Director did not address whether the applicant's conviction was for a crime involving moral turpitude, but driving without a license is a regulatory offense which generally is not a crime involving moral turpitude. See, e.g., *Matter of L-V-C-*, 22 I&N Dec. 594 (BIA 1999).

The applicant is eligible to apply for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act as the spouse of a U.S. citizen. A waiver under either section is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen or lawfully resident spouse or parent. The applicant's U.S. citizen spouse is the only qualifying relative in this case. The applicant's children are not qualifying relatives under sections 212(a)(9)(B)(v) and 212(i), so hardship to them will be considered only to the extent that it results in hardship to his qualifying spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 of Immigration Appeals (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 U.S. 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 (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 for the applicant states that the qualifying spouse was the victim of domestic violence in her previous marriage and that she depends on the applicant for emotional support and protection. Counsel also asserts that the qualifying spouse needs the applicant’s assistance in caring for her two daughters, one of whom has a medical condition and the other of whom has a learning disability. Additionally, counsel claims that the qualifying spouse’s ex-husband would not allow her to move with her daughters to Mexico and she does not feel she could relocate without them. Counsel also states that the qualifying spouse would struggle to find work and support her daughters in Mexico, and that it would be unsafe for the qualifying spouse and her family to live in Mexico due to the high rates of violent crime there.

In her statements, the qualifying spouse indicates that she and the applicant have a very close relationship and that they are raising her daughters and his daughter together. She feels that her daughters would suffer emotionally if separated from the applicant and his daughter. She also states that one of her daughters has alopecia, a condition which causes her to lose her hair and which has worsened due to the stress of the applicant’s potential removal from the United States. She indicates that her other daughter receives speech therapy services at school. She claims that the applicant helps care for her daughters when she is at work at night, and that he knows how to care for both of her daughters’ asthma symptoms while she is away. The qualifying spouse also asserts that she has health problems, including almost daily migraine headaches, tendonitis in her right hand, and a back spasm which has caused her to miss work. She states that the applicant assists her and cares for her daughters when she feels ill, and that he drives her to work because her tendonitis limits her ability to drive. The qualifying spouse notes that she does not have

other family members where she lives in Tampa, Florida and that she does not believe anyone else would be able to provide her sufficient help in the applicant's absence.

The qualifying spouse also states that her ex-husband, who abused her during their marriage, will not permit her to relocate to Mexico with her daughters. She notes that her ex-husband once took her daughters out of state without permission and that the applicant helped her find and return her daughters to Florida. She also states that she continues to fear her ex-husband, that she is enrolled in a domestic violence victim's recovery program, and that the applicant has assisted her in overcoming the abuse she suffered. Additionally, the qualifying spouse fears that her daughters would be unable to receive necessary medical care and special education services in Mexico, that they would be at risk of violence in Mexico, and that they would be unable to visit their family and friends in the United States.

The AAO finds that the qualifying spouse would experience extreme hardship if separated from the applicant. The record demonstrates that the qualifying spouse was the victim of domestic violence in her previous marriage and that she continues to seek treatment through a victim's recovery program. The record also shows that the qualifying spouse suffers from depression due to the abuse she suffered, that the applicant provides her with important emotional support, and that she may face an overwhelming amount of stress in the applicant's absence. Additionally, the record indicates that the qualifying spouse's ex-husband was arrested for interfering with custody and concealing a minor after moving out of state with her daughters without notice and preventing the qualifying spouse from contacting them. The applicant assisted her in traveling to North Carolina to reunite with her daughters.

Furthermore, the record demonstrates that the qualifying spouse relies on the applicant for assistance in managing her own health and that of her daughters. Medical records reflect that the qualifying spouse has been diagnosed with migraines, carpal tunnel syndrome, and pain in her fingers. Her finger pain has interfered with her ability to work and her fingers fall asleep when she is driving. For this reason, the qualifying spouse relies on the applicant to drive her to and from work. The qualifying spouse has also suffered from a back sprain and spasms for which she received emergency medical treatment. Additionally, medical records show that the qualifying spouse's eldest daughter has been diagnosed with alopecia, a condition which causes significant hair loss, as well as asthma and scoliosis, while her younger daughter has asthma, ADHD, and speech and language delays. The record demonstrates that the girls' asthma is serious, as the qualifying spouse has received approval for substantial unpaid leave from work in order to provide 24-hour care for her daughters during asthma attacks. The qualifying spouse has also explained that she relies on the applicant to take care of her daughters and to address their medical needs while she is at work.

The AAO also finds that the qualifying spouse would suffer extreme hardship if she were to relocate to Mexico with the applicant. As discussed above, the qualifying spouse's ex-husband was abusive and has violated a custody order by concealing her daughters from her in another state. The qualifying spouse claims that her ex-husband will not permit her to relocate to Mexico

with her daughters. While the qualifying spouse has not submitted a statement from her ex-husband, the AAO gives significant weight to the qualifying spouse's sworn affidavit in this case in light of her ex-husband's history of abusive behavior and disrespect for the custody arrangement. Additionally, the record contains a copy of the custody order, which grants each parent equal time with the children and instructs that "[n]either parent shall do anything which would estrange the child from the other" *Final Judgment of Dissolution of Marriage*, dated January 27, 2012. Therefore, it is likely that the qualifying spouse could become permanently separated from her daughters if she were to relocate to Mexico, and that her abusive ex-husband could gain full custody. Furthermore, the qualifying spouse continues to receive treatment in a domestic violence victims' recovery program, which may be unavailable to her in Mexico. Finally, the qualifying spouse was born in Puerto Rico and has lived her entire life in the United States, where she has close family ties, a job, and relationships with her doctors. Adjusting to life in an unfamiliar country would likely cause significant stress for her and may worsen her depression.

In the aggregate, the AAO finds that the difficulties the qualifying spouse would face if the waiver application were denied would amount to extreme hardship. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999).

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

Matter of Mendez, 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 unfavorable factors in this case are the applicant's filing of a fraudulent Form I-130 in an attempt to obtain an immigration benefit in the United States, his unlawful presence in the United States for over one year, and his conviction for driving without a license. A favorable factor is the extreme hardship his qualifying spouse would suffer if he were removed. Additionally, the record indicates that the applicant provides important emotional, physical, and financial support to his daughter and his two step-daughters. The applicant has also been living in the United States since the age of 13, he has worked and established close ties in this country, and he has paid taxes. Finally, the applicant's criminal conviction occurred over five years ago and there is no indication that he has been involved in criminal activity since that date.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.