

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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: SEP 27 2013

OFFICE: TAMPA, FLORIDA

FILE: [Redacted]

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i)
and 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 (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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Honduras 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 obtaining an immigration benefit through willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident spouse.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated April 23, 2013.

On appeal, counsel presents new evidence and asserts that the applicant's spouse would suffer extreme hardship without the applicant. *See Form I-290B, Notice of Appeal or Motion (Form I-290B)*, filed May 24, 2013, and *counsel's brief*.

The record contains, but is not limited to: counsel's brief, various immigration forms, statements by the applicant and the applicant's spouse, medical documents, business documents, financial records, photographs, marriage and divorce certificates, court records, identity and passport documents, and a licensed clinical social worker's report of the applicant's spouse. 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 that:

- (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.

The record reflects that the applicant provided false information while applying for Temporary Protected Status (TPS) on July 23, 1999. The applicant stated during his adjustment of status interview that despite claiming on his TPS application that he continuously resided in the United States since 1997, he did not remain in the United States after his August 1997 entry. This misrepresentation is material, as it shut off a line of inquiry that would have been relevant to the applicant's eligibility for the benefit sought. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961). The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest the inadmissibility.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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. I.N.S.*, 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.

The applicant's spouse is a 37 year-old native of Cuba and lawful permanent resident of the United States since 2006. She met the applicant in 2010, and they married in 2012. The applicant's spouse states that she would suffer physically, emotionally and financially without the applicant. Medical records and statements reflect that two automobile accidents in 2011 caused her severe back and neck injuries. She explains that the pain and inflammation from the injuries prevent her from continuing with her previous employment of house cleaning. She also fears driving and entering a car after these accidents. Medical documents indicate that she was prescribed medication, but according to the applicant's statement submitted on appeal, his spouse had an adverse reaction to the medication and opted to take natural remedies after their insurance coverage was depleted. Receipts showing purchases of natural juices and pills as well as descriptions of their health benefits were submitted as evidence on appeal. He reports that although the side effects of the medication, such as dizziness and sleeplessness, have subsided and the natural remedies have helped to decrease inflammation, she continues to have pain. The applicant indicates that his spouse still does not have an independent lifestyle, and he does all the household chores in addition to taking care of her. Business records confirm his statements that that he began an on-line business and works from home; he does so to be near his spouse and help her. He states that his spouse helps him with his business occasionally, which also helps her with her depressed mood. A clinical social worker who interviewed the applicant's spouse in February 2013 indicates that the applicant's spouse is extremely dependent on the applicant and would "suffer severe anxiety and depression" without him.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including her health, the emotional strain of separation from the applicant, and her physical, emotional and financial dependence on the applicant. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's lawful permanent spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse states that she cannot relocate to Honduras because she would not feel safe and because of the limited medical care available there. Through the social worker, the applicant's spouse states that she rarely leaves their apartment due to her fears and physical pain. The social worker opines that the applicant's spouse's home with the applicant has become her "zone of familiarity" and if leaving that home to go to the supermarket, for instance, causes her stress, then relocating to Honduras would heighten her sense of fear and anxiety. She claims that Honduras's high crime rate would also damage the applicant's spouse's vulnerable mental state and cause her to seek medical or psychiatric care. The U.S. Department of State's Travel Warning for Honduras dated July 17, 2013 supports the social worker's assertions and warns U.S. citizens that crime and violence levels remain critically high, Honduras has the highest murder rate in the world, and the Honduran government lacks sufficient resources to address these issues.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her length of residence in the United States, her limited physical capabilities, her mental and emotional health, and safety concerns in Honduras. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's spouse would suffer extreme hardship were she to relocate to the Honduras to be with the applicant.

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. at 301. 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 her 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 Board 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 Board 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 section 212(i) 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 applicant's lawful permanent resident spouse; the extreme hardship she would face if the applicant is not granted this waiver, whether she accompanied him or remained in the United States; and the applicant's lack of a criminal record. The unfavorable factor in this matter is the applicant's misrepresentation of continuous residence since 1997 to receive an immigration benefit. Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

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.