

(b)(6)



U.S. Citizenship
and Immigration
Services

[REDACTED]

Date: AUG 01 2014 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 (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 Field Office Director, San Francisco, California, 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 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), for misrepresenting his intent when he entered the United States as an intending immigrant under a non-immigrant visa. He is the spouse of a U.S. citizen and has two U.S. citizen children. 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 spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 1, 2013.

On appeal, filed on May 29, 2013 and received by the AAO on April 1, 2014, counsel for the applicant asserts the Field Office Director's decision failed to address asserted mental hardship impacts, failed to thoroughly examine evidence that had been submitted into the record and failed to consider the hardship in the aggregate.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant, his spouse and their family members; tax and income records for the applicant's spouse; country conditions materials on Mexico and background materials on drug-violence; medical statements pertaining the applicant's spouse's mental health from her primary care doctor, psychiatrist and family therapist; statements from friends and family members of the applicant and his spouse; a letter from the applicant's spouse's employer; legal documents pertaining to legal obligations of the applicant's spouse in the United States; background materials on the cost of child-care in the applicant's spouse's county of residence.

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 and the applicant admits that he renewed his non-immigrant visa in 2011 when he intended to resume his residence and employment in the United States. He remained beyond his period of authorized stay and filed an application for adjustment on August 27, 2012. As the applicant misrepresented his intent to immigrate to the United States he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring a visa to enter the United States by willfully misrepresenting a material fact, to wit, his intent to immigrate to the United States. On the applicant's Form I-601 he lists several periods in which he resided in the United States without authorization. These periods of unlawful presence comprise more than one year and also render the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. As the requirements for a waiver

under section 212(a)(9)(B)(v) are the same as the requirements for a waiver under section 212(i), this decision will apply to both grounds of inadmissibility.

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 spouse 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 the adjudicator must then determine whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel for the applicant asserts the applicant had submitted sufficient evidence to establish the applicant’s spouse would experience extreme hardship upon separation or relocation and that the director’s decision was in error. He explains that the applicant’s spouse has a history of mental health issues, and that if the applicant is removed it will exacerbate her conditions and leave her to care for the applicant’s two small children as a single mother. Counsel further asserts that the applicant’s removal will result in a financial hardship to the applicant’s spouse.

The applicant’s spouse has submitted a letter illustrating the hardships she is facing due to the potential removal of the applicant. She states she would experience financial hardship if the applicant were removed because he is currently their children’s primary caretaker during the day and that finding child-care would be expensive. The record contains a breakdown of baby-sitting costs for the area where the applicant’s spouse currently lives, indicating that the applicant’s spouse would experience financial hardship if the applicant were removed.

The applicant's spouse also discusses her troubled childhood and the resulting mental health problems she has experienced because of this. She explains that the applicant has provided her with emotional stability and a supporting relationship. Letters submitted into the record by friends and family of the applicant and his spouse also attest to the emotional stability and supportive relationship the applicant provides his spouse. Counsel for the applicant also outlined the applicant's spouse's mental health history, and refers to several documents in the record to support his assertions.

The record contains a letter from the applicant's primary care physician stating that the applicant's spouse has been a patient of hers for ten years and suffers from depression and generalized anxiety disorder and has been prescribed medications to treat her condition. She states that separation from the applicant would likely exacerbate her conditions. The record also contains a psychological evaluation of the applicant's spouse by a licensed psychologist. In the report the psychologist recounts the applicant's spouse's troubled childhood and the effects it had on her mental health. The report diagnoses the applicant's spouse with Depression and Generalized Anxiety Disorder and concludes that the applicant's spouse is emotionally dependant on the applicant and would experience an exacerbation of her symptoms if she had to separate from the applicant or relocate herself and her children to Mexico. The record also contains a statement from the applicant's spouse's family therapist corroborating the applicant's spouse's history of mental health issues and stating that due to her abandonment issues the applicant's absence would deeply affect the emotional stability of the applicant's spouse. The record also contains letters from family and friends of the applicant's spouse which attest to the applicant's spouse's history of mental health issues.

The applicant's spouse has expressed that she would be very scared for the applicant if he had to relocate to Mexico. She notes the dangerous conditions there and worries that the applicant would not be safe. Counsel for the applicant has asserted that the conditions in Mexico are dangerous, particularly if the applicant's spouse and children were to relocate there. The record also contains letters from friends and family members of the applicant and his spouse discussing the conditions in Mexico and pointing to recent incidents that have occurred in the area where the applicant would likely reside.

The applicant's spouse has asserted that she will have to assume the burdens of being a single-parent, and that having to cope with caring for her children while supporting them financially and bearing the loss of her spouse at the same time would be devastating to her and make her feel like a failure as a parent. These concerns are also discussed in the psychological evaluations of the applicant's spouse.

The record contains evidence related to the financial impact on the applicant's spouse if the applicant were removed. This evidence includes tax returns and other financial documents indicating the applicant's spouse's current income is \$108,201 annually. The record also contains evidence indicating the applicant's spouse owns property and has financial obligations related to that, but there is little other evidence indicating what the applicant's spouse's total financial obligation is or why she would be unable to meet those obligations without financial assistance from the applicant's income. While having to hire a baby-sitter for two children represents a financial

impact, the record is unclear as to the level of financial hardship on the applicant's spouse will experience if the applicant is removed.

The record contains sufficient evidence to establish that the applicant's spouse has a history of psychological issues, as well as the psychological and emotional fears related to the applicant's relocation to the dangerous environment in Mexico, and the additional burdens of being a single mother. When these factors are considered in the aggregate they rise to the level of extreme hardship.

With regard to hardship upon relocation, counsel for the applicant asserts the applicant's spouse would experience medical hardship upon relocation because she would have to sever ties with her U.S. doctors and have to re-establish her medical care and treatment in Mexico. Counsel asserts that without her U.S. based employment and health insurance benefits, the applicant's spouse would not likely be able to afford English-speaking doctors for her care in Mexico. Counsel explains that the applicant's spouse has never resided in Mexico and does not speak Spanish. Counsel also asserts that the applicant's spouse, who had a troubled childhood resulting in mental health issues, would have to leave her family, friends and employment in the United States, including having to sever legal obligations she has to her mother and step-father's estate. Finally, counsel explains that there would be a range of impacts on the applicant's two young children if they had to relocate, namely severing community and family ties in the United States and not speaking Spanish or having ever lived in Mexico, and that these hardships would impact the applicant's spouse as she would have to become the primary caretaker if they relocated to Mexico.

The applicant's spouse has submitted a letter explaining the hardships she would endure upon relocation to Mexico, including having to sever the educational and community ties of her children. She explains that she has legal obligations to her parents and a successful career as a health care worker that she would have to abandon if she relocated to Mexico, losing her employment benefits and any family resources that she would have in the United States.

The record establishes that the applicant's spouse has had over ten years of stable employment with her current employer. The record contains a letter from her employer discussing her value to the company. There are also copies of legal documents demonstrating the applicant's spouse's trusteeship and power of attorney for her parents. As discussed previously, the record also contains substantial documentation of the applicant's spouse's mental health issues, establishing that she would experience psychological hardship from having to disrupt her continuity of medical care with the doctors and health care practitioners familiar with her history and treatment. The record also contains evidence that the applicant and his spouse have two young children who were born in the United States, one of whom now attends U.S. public schools. Having to relocate two children to Mexico when she does not speak Spanish would present a hardship to the applicant's spouse. Finally, the record contains background materials on the conditions in Mexico, including articles which cover violent incidents in the area surrounding the applicant's home state in Mexico.

When the hardships upon relocation are considered in the aggregate, they rise to a level of extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship, we may now determine whether the applicant warrants a waiver 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-Moralez, 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 include the applicant's misrepresentation and periods of unauthorized presence and employment. The favorable factors in this case include the presence of the applicant's spouse and U.S. citizen children, the hardship the applicant's spouse and children would experience due to his inadmissibility, the letters in the record discussing the applicant's moral character and the lack of any criminal record.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.