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

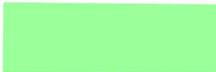


U.S. Citizenship
and Immigration
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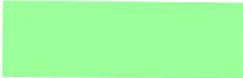


DATE: FEB 05 2014

Office: LOS ANGELES

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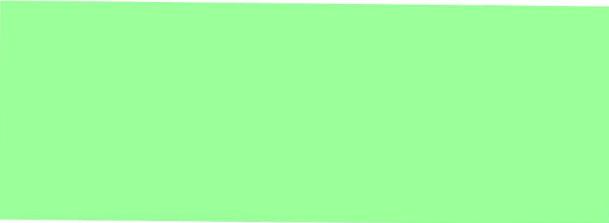
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 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 "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application, and it 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 procuring or attempting to procure admission to the United States by fraud or misrepresentation. He seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, August 18, 2011.

On appeal, submitted in September 2011 and received by the AAO in August 2013, counsel for the applicant contends that USCIS erred in finding the applicant failed to provide sufficient evidence his wife would experience extreme hardship if he is unable to reside in the United States and by not considering the hardship statement submitted by his wife in support of the waiver application. In support of the appeal, counsel resubmits the evidence provided with the Form I-601. The record contains documentation including, but not limited to: a hardship statement; financial information, such as real property documents and mortgage statements, tax returns and pay stubs, bank statements, utility bills, and other periodic expense statements; naturalization, marriage, and birth certificates; medical records, including a doctor's letter, prescription information, and lists of procedures; and special education progress reports. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 record reflects that the applicant tried to procure U.S. admission on January 20, 1997 using the Border Crossing Card of another person, was detained, ordered excluded, and deported on January 24, 1997. He subsequently re-entered the country in February 1997 without admission or parole and claims to have remained here since that date.

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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is a 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding the claim of hardship due to separation from the applicant, the record contains evidence that separation will cause a qualifying relative distress beyond what commonly results from inadmissibility of a family member. The applicant's wife claims that what began as post-partum depression after the births of her children in 2000 and 2002 never lifted, and provides her doctor's statement regarding diagnosis of ongoing depression, as well as anxiety disorder, and copies of prescriptions showing she is taking two anti-depressive medications. The qualifying relative documents that she and the applicant have been married for 13 years, have two children, and also support the qualifying relative's niece and nephew of whom she has been legal guardian since 2007. She states that her older son is autistic, fearful of new situations and being left alone, and thus needs continuity of care by both his parents. She claims that she and the applicant spend at least an hour per day helping him with school work, assist him with activities such as showering, and must patiently explain things to avoid outbursts of crying. Documentation confirms the child's diagnosis, states that he exhibits a high level of anxiety, and indicates he is responding well to his home environment and special educational support in the local public schools.

While the record shows the couple sharing parenting responsibilities for four dependent minors, ages 11 to 14, it reflects that the applicant has for many years been the sole wage earner for the household, which also includes the qualifying relative's 68-year-old mother and 48-year-old sister. Joint tax returns dating to 2004 establish that the applicant has earned from \$50,000 to \$60,000 almost every year. The qualifying relative claims that her mother receives no social security benefits, her sister is receiving chemotherapy treatments for an inoperable brain tumor, and no other family members are able to assist her mother and sister economically. She states that her husband supports the extended family of four children and four adults by his earnings, and she is a full-time homemaker due to the needs of her children and mother. The record reflects that the qualifying relative and the children receive dependent insurance coverage through the applicant's employment. The record shows the couple has significant expenses, including two mortgages, monthly utilities and living costs, and the mother- and sister-in-law's medical expenses. Based on the record, the AAO concludes that the applicant's absence will impair his wife's ability to care for her children and other family members, make her unable to meet her financial obligations, and thus place her at risk of losing the family home.

For these reasons, the cumulative effect of the emotional and financial hardships the applicant's wife will experience due to the applicant's inadmissibility rises to the level of extreme and shows that, as a result of his absence, she would suffer hardship beyond those problems normally associated with family separation.

Regarding hardship due to relocation, the record establishes that moving to Mexico to remain with the applicant will also adversely impact his wife beyond the usual consequences of removal or inadmissibility. Having come to the United States at the age of 15 and become a naturalized citizen at 33, the applicant's wife has spent her entire adulthood in the United States. There is evidence that her immediate family members live here, as do her husband's parents and siblings, and there is no indication she has any remaining ties in Mexico. She claims to have limited prospects in Mexico, fears for her U.S. citizen children's futures there, and worries that the family will be unable to afford the special educational support to meet her autistic son's needs. Leaving the country will sever ties with existing healthcare providers, while causing loss of insurance and treatment benefits she and her son rely upon as part of their daily functioning. Documentation indicates that inability to earn sufficient income to pay total annual mortgage debt of nearly \$20,000 will jeopardize the family's U.S. property ownership and undermine its economic security.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to Mexico due to poor employment prospects, lack of access to essential health care, and inability to continue meeting U.S. financial obligations. Further, relocating would deprive the applicant's wife of contact with extended family members living in the United States and of the means to support relatives currently dependent on her and her husband, thereby adding stress to her mental health burden.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardships the applicant's wife will face if the applicant remains in Mexico, regardless of whether she joins the applicant there or remains here; the applicant's over 20-year residence in the United States; history of gainful employment; and reporting and paying income taxes. The unfavorable factors in this matter concern the applicant's fraudulent use of another person's travel documents, entry without inspection and remaining in the United States without authorization, and 1996 convictions for aiding and abetting in a speed contest and avoiding a toll charge.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law and his criminal conviction, the AAO finds that a favorable exercise of discretion is warranted.¹

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.

¹ The applicant remains inadmissible, however, under section 212(a)(9)(A)(ii) of the Act as an alien previously removed and thus also requires an approved Form I-212, Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Act.