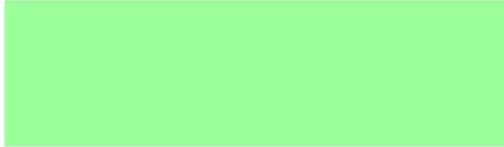


(b)(6)

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



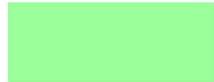
U.S. Citizenship
and Immigration
Services



Date: JUN 30 2014

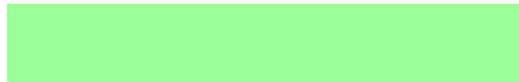
Office: ALBUQUERQUE FIELD OFFICE

FILE:



IN RE:

Applicant:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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,

FR
A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Albuquerque, New Mexico, 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated December 2, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director erred by not finding the applicant's spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. Counsel cites the spouse's family ties, interest in family business, dependence on the applicant for child care needs, and the attempted extortion of his business in Mexico. With the appeal counsel submits a brief, statements from the applicant and her spouse, financial documentation, and country information for Mexico. The record also contains letters of support for the applicant, educational certificates for the applicant, and other evidence submitted in conjunction with the Petition for Alien Relative (Form I-130) and Application to Adjust Status (Form I-485). 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 when applying for a Border Crossing Card at the U.S. Consulate in November 2010, the applicant indicated that her spouse was a Mexican native citizen and living in Mexico at that time, when in fact her spouse was a native-born U.S. citizen living in the United States at the time. The field office director determined that the applicant's action was to circumvent and evade immigration laws and thus she is inadmissible under Section 212(a)(6)(C) for misrepresentation. Neither counsel nor the applicant has contested the finding of inadmissibility.

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. 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 USCIS then assesses 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. *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 asserts that if the applicant returns to Mexico her spouse will experience emotional hardship because he and the applicant are devoted to each other, they work as a team sharing household and business responsibilities, and a long distance relationship with the applicant will impact his happiness and tranquility. Counsel asserts that the spouse would fear for the applicant’s safety, as she might be a target for kidnapping, and be concerned about the care of their children as he cannot be a father and mother to them. Counsel states that as a driver the spouse takes long trips and depends exclusively on the applicant for child care, which is otherwise too expensive and not available for the amount of time required for the spouse to be a driver.

In his affidavit the applicant’s spouse states that he relies on the applicant for care of the home and children. He states that he cannot trust the children to day care for many days and can also not ask his family to care for the children for days at a time. He also states that the applicant helps with his business by receiving calls for jobs and doing bookkeeping, and that she is responsible for paying bills and taxes and assuring that he is current on his driving courses.

The record establishes that the applicant’s spouse will suffer extreme hardship as a consequence of being separated from the applicant. Counsel and the applicant’s spouse assert that the spouse would be unable to find or afford child care for his children in the applicant’s absence. The record shows that the applicant’s spouse is a truck driver traveling for days at a time for which he would face hardship finding care for his children. Were the applicant’s spouse unable to find care for his children it would threaten his employment and financial ability to support his children and possibly the applicant in Mexico. The record thus demonstrates that the spouse would suffer extreme hardship if he were to remain in the United States without the applicant.

The record also establishes that the applicant's spouse would suffer extreme hardship in the event that he relocated to Mexico with the applicant. Counsel asserts that the applicant's spouse has 44 immediate and extended family members in the United States and that his family ties extend to the business he shares with his father and uncle. Counsel asserts that if the applicant's spouse relocates to Mexico he would take a significant loss on his ownership interest in the business that is just starting to become profitable. Counsel states that the spouse operated a transportation business in Mexico, that he abandoned in 2010. The applicant's spouse states that he left Mexico because after opening the trucking business there he was threatened to pay weekly quotas or he would be hurt. He states that after being held at gun point he went to the police, but was told that if he made a report he would need to provide his home address and then someone would find and kill him. The spouse states that in Mexico people are extorted, that there are thousands of killings, and that police are involved in the corruption. Counsel cites U.S. Department of State travel warnings for Mexico.

A Department of State Travel Warning for Mexico dated January 9, 2014, states that crime and violence are serious problems and can occur anywhere, with U.S. citizens falling victim to criminal activity, including homicide, gun battles, kidnapping, carjacking and highway robbery. According to the applicant's Biographic Information (Form G-325A) her parents reside in the state of which is also from where the record reflects that the spouse's family emigrated. The Department of State warning indicates that crime and violence remain serious problems throughout the state of where U.S. citizens should defer non-essential travel anywhere in the state and travel during daylight hours between cities.

As such, the record reflects that the cumulative effect of the spouse's family ties to the United States, his safety concerns, and loss of employment were he to relocate, rises to the level of extreme. We thus conclude that were the applicant unable to reside in the United States due to her inadmissibility, her spouse would suffer extreme hardship if he returned to Mexico with her.

Considered in the aggregate, the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied.

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. 296, 301 (BIA 1996). 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 his 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 BIA 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 BIA 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 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 hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from her spouse, his family and friends in the United States, and apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's entry to the United States by misrepresentation.

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 her burden and the appeal will be sustained.

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.