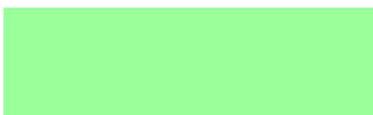




U.S. Citizenship
and Immigration
Services

(b)(6)



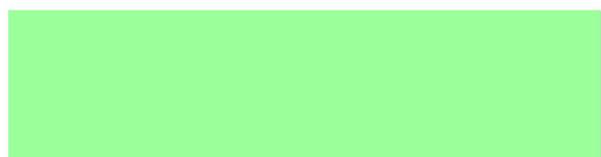
DATE: SEP 10 2014 OFFICE: ALBUQUERQUE, NM

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. 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, Albuquerque, New Mexico, and 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 has resided in the United States since October 9, 2009, when she was admitted pursuant to a border crossing card. She 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 procured that border crossing card through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant did not demonstrate that her spouse would experience extreme hardship given her inadmissibility and denied the application accordingly. See *Decision of Field Office Director* dated November 5, 2013.

On appeal, counsel submits: a brief in support; statements from the applicant's spouse; letters from family members, employers, and educators; a birth certificate; employment, medical, and financial records; a U.S. Department of State travel warning; and an article on violence in Mexico. In the brief, counsel contends the spouse's medical and psychological conditions, his finances, and his family-related responsibilities would cause extreme hardship in the event of separation from the applicant and in the event of relocation to Mexico. Counsel also contends the country conditions in Chihuahua, Mexico, are so severe that neither the applicant nor her spouse would be safe there.

The record includes, but is not limited to: the documents listed above; statements from the applicant and her spouse; evidence of birth, marriage, residence, and citizenship; letters from family, friends, employers, physicians, educators, and other community members; a psychological evaluation; financial documents; other applications and petitions; and photographs. 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.

In the present case, the record reflects that pursuant to a nonimmigrant visa application, the applicant claimed in an October 28, 2008, consular interview that she was single, when in fact she was married to a United States citizen. The applicant also falsely stated on her DS-156, nonimmigrant visa application, that she had never been in the United States, when she had actually given birth to a child in the United States in 2005, and that she had no U.S. citizen relatives. The applicant was issued a border crossing card on October 28, 2008, which she presented for admission into the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 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 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 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 contends he will experience medical, psychological, financial, and family-related hardship upon separation from the applicant. He explains that he has severe hypertension, and still suffers from work-related injuries sustained in 2011, which were exacerbated in 2012. Medical records are submitted in support. The spouse’s physician indicates in a letter that the spouse’s hypertension has been exacerbated by anxiety over the applicant’s immigration situation, which has in turn resulted in an increase in his medication dosage. A licensed professional clinical counselor (“LPCC”) states in an evaluation that in light of the prospect of him and / or his spouse and daughters returning to Chihuahua, Mexico, the spouse experiences constant anxiety and depression, especially given the dangerous and violent country conditions where they would be living. The spouse contends that in addition to gang related violence, when he was young his mother was stalked and sexually harassed, and they were helpless to stop it because his father was away for work. He explains that the applicant was similarly harassed by a man when she was living in Chihuahua, and if they were separated, he would be unable to protect her. The LPCC reports that the spouse’s emotional state has deteriorated so badly that he has lost 30 pounds in the last few months. The applicant’s spouse moreover claims that without the applicant in the United States to take care of their three children while he works as a commercial truck driver, he will not

be able to meet his financial obligations. Copies of paychecks, bills, and receipts are submitted in support.

The spouse also asserts that he cannot return to Mexico with the applicant and their three children. He indicates that friends of his family were recently killed after being abducted and tortured. Translated articles are submitted on appeal. The spouse claims the dangerous country conditions in Chihuahua, Mexico, are reflected in the U.S. Department of State's travel warning. In addition, the spouse contends he would have to give up his job in the United States, and without that income, he would not be able to support himself and his family. A letter from the spouse's employer is present in the record. The spouse adds that his job would no longer pay for his medical care related to his injuries if he relocated to Mexico. Furthermore, the applicant's spouse indicates that they would not be able to live with his or his spouse's parents, as the houses are too small. Photographs are present in the record. The spouse also claims that the area suffers from extreme poverty, and that his children would not be able to attend good schools there either.

The record supports a finding of extreme hardship in the event of separation. The applicant has submitted sufficient evidence of her spouse's income and expenses to demonstrate that any additional expenses, such as paying for the applicant and their three children to live in another residence would cause financial hardship. Furthermore, the applicant has submitted sufficient documentation demonstrating that her spouse has experienced some emotional difficulties in the past, and that they have been exacerbated by the applicant's current situation. The record also reflects that the applicant's spouse still experiences some medical difficulties which have had a negative impact on his work.

Therefore, there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, we conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without her spouse.

The applicant has also submitted sufficient evidence to show that her spouse would experience extreme hardship upon relocation to Mexico. The U.S. Department of State ("DOS") travel warning indicates that U.S. citizens should defer non-essential travel to the state of Chihuahua, and to travel during daylight hours between cities. *DOS Travel Warning: Mexico, August 15, 2014*. Furthermore, the applicant has submitted documentation demonstrating that friends of her spouse were attacked and killed. In addition to the adverse country conditions, the applicant's spouse, a native of the United States, has presented a letter from his employer indicating he would lose his job if he had to relocate. The record reflects that the applicant's spouse would have difficulty supporting the applicant and their three children without this job.

In light of the evidence of record, the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the financial, safety-related, or other impacts of

relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, we find that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

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-Morales*, 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.

The unfavorable factors include the applicant's entry without inspection in 2005, her 2008 misrepresentations and periods of unauthorized presence. The favorable factors include the extreme hardship to the applicant's spouse, evidence of hardship to their U.S. citizen children, her lack of a criminal history, and evidence of good moral character as stated in letters from family and friends.

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.

ORDER: The appeal is sustained.