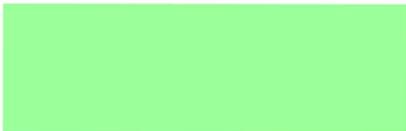


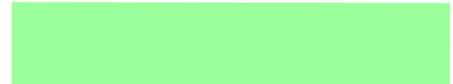


**U.S. Citizenship  
and Immigration  
Services**

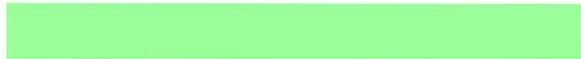
(b)(6)



DATE: ~~SEP 12~~ 2014 OFFICE: SEATTLE, WA



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), and under Section 212(i) of 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 waiver application was denied by the Field Office Director, Seattle, Washington, 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and having subsequently departed the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the applicant was additionally inadmissible under section 212(a)(9)(C)(i)(II) of the Act for having entered the United States without inspection on January 3, 2004, after having been ordered removed on August 15, 2003. *See Decision of Field Office Director* dated June 27, 2013. The application was accordingly denied. *Id.*

On appeal, counsel submits: a brief; copies of documents related to immigration court proceedings; compact discs; and an envelope related to a Petition for Alien Relative (Form I-130). In the brief, counsel contends the applicant did not enter the United States without inspection in 2004, and therefore, that he is not inadmissible under section 212(a)(9)(C) of the Act. Counsel explains that on December 5, 2011, an immigration judge found that the applicant was inspected and admitted to the United States on January 3, 2004, and that the Field Office Director erred by not giving deference to this finding.

The record includes, but is not limited to: the documents listed above; evidence of birth, marriage, residence, and citizenship; other documents related to immigration court proceedings; other applications and petitions; statements from the applicant and his spouse; psychological, medical, and educational records; letters from a licensed medical health counselor; letters from family, friends, and educators; articles on learning disabilities and education in Mexico; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states, in pertinent part:

....  
(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

- (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

On August 15, 2003, after the applicant's departure from the United States earlier that month, he presented a border crossing card which did not belong to him in an attempt to procure admission into the United States. The applicant was ordered removed under section 235(b)(1) of the Act that same day. The Field Office Director found that the applicant subsequently entered the United States without inspection on January 3, 2004.

The record reflects that the matter of whether the applicant's January 3, 2004 entry into the United States was with or without inspection and admission was the subject of removal hearings before an immigration judge. On December 5, 2011, after hearing testimony from a number of witnesses, the immigration judge terminated the proceedings with prejudice to renewal of the charge on the Notice to Appear, namely, section 212(a)(6)(B) of the Act, which charged that the applicant was an alien present in the United States without being admitted or paroled. This order is confirmed by the copy of the order which is contained in the record and by the compact discs of the proceedings submitted on appeal. The immigration judge found that "...the Respondent has established procedural regularity with respect to his claimed inspection and admission into the United States in January 2004" and specifically granted the motion to terminate "with prejudice to a renewal of proceedings at a future date on the instant charge." The record contains affidavits from the same individuals who appeared before the immigration judge, as well as a government record confirming that the car in which the applicant claims to have entered the United States entered the United States on the date claimed. The immigration judge found, and evidence in the record supports, that the applicant was inspected and admitted on January 3, 2004, subsequent to his unlawful presence and removal, therefore, he is not inadmissible under section 212(a)(9)(C) of the Act.

The applicant remains, however, inadmissible under sections 212(a)(9)(B) and (6)(C) of the Act. These charges have not been contested on appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

**(B) ALIENS UNLAWFULLY PRESENT.-**

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant admits he entered the United States without inspection with his family in 1991. The record reflects that he returned to Mexico in August 2003. Therefore, the applicant accrued unlawful presence from March 28, 1998, the date of his eighteenth birthday, until he returned to Mexico in August 2003. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence and subsequently departing the United States.

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.

The record reflects that the applicant presented a border crossing card which did not belong to him in an attempt to procure admission into the United States. The applicant was charged with inadmissibility under section 212(a)(6)(C)(i) of the Act, and pursuant to section 235(b)(1) of the Act he was ordered removed the same day. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation.

The applicant's qualifying relative for waivers of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act is his U.S. citizen spouse.

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 she will experience financial, psychological, and family-related hardship upon separation from the applicant. She indicates she has struggled with psychological issues since her late teens, and that she has been hospitalized several times for psychiatric care. In a letter, a licensed mental health counselor (“LMHC”) indicates that the spouse has been treated at the LMHC’s clinic since 2005, and that she has a history of bipolar disorder. Medical and psychological records are submitted in support. The applicant’s spouse explains that her psychological conditions have negatively impacted her ability to assume her fair share of responsibilities related to parenting her three children. The spouse adds that these responsibilities with respect to her middle child are heightened because he has autism. She indicates that her middle child has to take medicine, requires a PAP machine for his sleep disorder, and he has been a part of various studies to remedy this sleep disorder. The spouse contends that although her middle child is not the applicant’s biological son, the applicant takes care of him as if he were his own, by setting up his PAP machine every night, making sure he is taking his medications, staying overnight with him at the hospital, and parenting him. She states that the applicant provides invaluable emotional and other support in light of her psychological conditions. With respect to financial difficulties, the spouse indicates that she does not work because of her psychiatric disability, and her only income is her social security income. A statement from the Social

Security Administration is submitted in support. The spouse adds that, without the applicant's income, she and her children would live in poverty.

In addition, the spouse claims she cannot move to Mexico. She explains that the specialized psychiatric care she needs and the autism treatment her son requires would be difficult to access in Mexico. Articles on education and autism treatment in Mexico are present in the record. She explains that such care is only affordable in the United States due to government assistance, which she would be unable to obtain in Mexico. Furthermore, the spouse states that she would not be able to leave the country because of the custody agreement she has with her middle child's father. She also contends she cannot relocate to Mexico because she does not speak Spanish, she felt unsafe in Mexico when she visited for the consular interview, and she does not know where they would live or how they would afford to live there.

The assertions on the spouse's bipolar disorder and other psychological issues are documented by evidence of record. Her medical records, as well as the letter from the LMHC, demonstrate that she has had long-standing and at times severe psychological difficulties which have had negative effects on her life, the impact of which the applicant has helped alleviate. The applicant has also shown that his spouse, who is on social security income because of her psychological conditions, would experience financial hardship without him present to provide for her and their three children. In addition, medical and educational records for the middle child support contentions that he has autism, and that the applicant has had to take on responsibilities related to the child's care which would be difficult for the spouse to handle alone given her psychological issues.

There is sufficient evidence of record to demonstrate that the spouse's 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, the applicant has established that his spouse would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without his spouse.

The applicant has also submitted sufficient documentation to establish that his spouse would experience extreme hardship in Mexico. While the applicant did not provide a custody agreement to support an assertion that the spouse cannot take the middle child to Mexico, the record supports assertions that the child and the spouse may have difficulty finding adequate treatment in Mexico. Furthermore, the record reflects that the applicant's spouse would be unable to obtain treatment from the medical provider she has been with since 2005. The applicant has also shown that his spouse, who is a native of the United States, would have difficulties in Mexico given the fact that she has no family there, and she does not speak Spanish.

In light of the evidence of record, the applicant has established that his 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 emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships

normally experienced, the applicant has established that his spouse 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 his U.S. citizen 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 1991 entry without inspection, his periods of unlawful presence in the United States, his August 15, 2003, misrepresentation, his order of removal, and evidence that he was employed in the United States without authorization. The positive factors include the extreme hardship to his U.S. citizen spouse, evidence of hardship to the children, the applicant's lack of a criminal record, and evidence of good moral character as stated in letters from family, friends, and community members.

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.

The record reflects that the applicant's I-212 application was also denied on June 27, 2013. The Field Office Director found that applicant was inadmissible under section 212(a)(9)(C) and not eligible for permission to reapply for admission. As it has been determined that the applicant is not inadmissible under section 212(a)(9)(C) of the Act the Field Office Director should reconsider the denial of the I-212 application.

**ORDER:** The appeal is sustained.