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



U.S. Citizenship
and Immigration
Services



Date: **APR 03 2015**

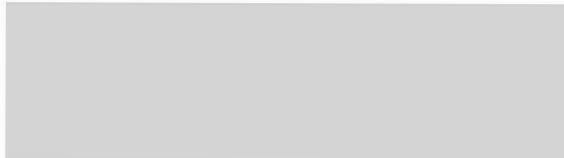
Office: ALBUQUERQUE

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,


for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, [REDACTED] 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 record reflects that the applicant, a native and citizen of Mexico, 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his lawful permanent resident spouse, his lawful permanent resident mother, and his U.S. citizen children.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, July 30, 2014.

On appeal, the applicant contends that his qualifying relatives will suffer extreme hardship if the waiver application is denied, and submits additional evidence of hardship to his spouse and his mother.

The record includes, but is not limited to, the following documentation: statements from the applicant, the applicant's spouse, the applicant's parents, and the applicant's children; financial documentation; medical documentation for the applicant's spouse; letters of reference; and country-conditions information on Mexico. 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.

The record indicates that the applicant was issued a Border Crossing Card (BCC) in May 2001. To receive a BCC, the law requires the alien to have a residence abroad that he or she does not intend to abandon. During an interview with a U.S. Citizenship and Immigration Services (USCIS) officer on May 12, 2011, the applicant testified that he used the BCC to enter the United States on July 19, 2004, at which time he told the U.S. immigration officer that he was coming to the United States for a visit of 15 days. However, the applicant was entering to resume his residence in the United States. We therefore concur with the Field Office Director's finding that the applicant made a willful misrepresentation in his responses to U.S. immigration officials in order to gain admission to the United States. The applicant does not contest his inadmissibility.

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

The Attorney General [now Secretary of the Department of Homeland Security (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.

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 lawful permanent resident spouse and lawful permanent resident mother are the only qualifying relatives in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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. See *Salcido-Salcido v. INS*, 138 F.3d 1292, 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 applicant asserts that his spouse will suffer emotional hardship if she is separated from the applicant, stating that she has been fighting depression, anxiety, and alcoholism. Medical documentation in the record indicates that the applicant’s spouse has been treated for alcoholism and depression for the last three years. The applicant and his spouse submit statements to indicate that the applicant is an integral part of his spouse’s sobriety and ability to function in her daily life. The record indicates further that the applicant’s immigration situation and possible separation from the applicant is causing his wife to drink more.

Additional medical documentation in the record indicates that the applicant’s spouse has been diagnosed with cirrhosis of the liver, hepatitis C, and high blood pressure. She also received abnormal test results which suggest she may be at a high risk for cervical cancer.

Furthermore, the applicant asserts that his spouse will suffer from financial hardship if the waiver application is not approved. The record indicates that the applicant’s spouse is a homemaker and not employed, and that the applicant has supported the family throughout their marriage. The record indicates that the applicant is part owner of a car dealership, and the applicant states that he currently earns approximately \$32,000 per year, which is confirmed by W-2 Forms and Joint Income Tax Returns submitted with an Affidavit of Support. The applicant states that he and his spouse have four children, three of whom still live in the family home, including his daughter who is a single parent, along with the applicant’s granddaughter. As the applicant’s spouse is not employed, the loss of financial support from the applicant will cause hardship to the applicant’s spouse.

The record establishes that if the waiver application were denied, the applicant's spouse would experience medical, financial, and emotional hardship as a result of loss of the applicant's income and support and separation from his family. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

Regarding hardship that the applicant's spouse may experience if she were to relocate to Mexico, the record indicates that the applicant's spouse was born in Mexico and is familiar with the language and customs of that country. However, the record establishes that the applicant's spouse has no immediate family members in Mexico. In addition to her four children residing in the United States, her mother is a U.S. citizen, her father is a lawful permanent resident, and all her brothers and sisters live in the United States. The applicant's parents also reside in the United States.

With respect to the medical conditions of the applicant's spouse, including cirrhosis of the liver, hepatitis C, and high blood pressure, the applicant states that all these conditions are being monitored by her doctors in the United States who know her history, and that it is important that she continue to receive care from the doctors who know her situation. The applicant contends that it will be difficult for his spouse to find proper health care in Mexico to treat her conditions.

The record indicates that the applicant is from [REDACTED] Mexico, and the applicant submits country-conditions information regarding safety and security issues in the Mexican state of [REDACTED]. The U.S. Department of State has issued a travel warning for Mexico specifically referencing [REDACTED].

Based on the evidence on the record, the applicant has established that the hardships that his spouse would experience, considered in the aggregate, are hardships beyond the common results of removal if she were to relocate to Mexico to reside with the applicant.

As we have found that the applicant's spouse would suffer extreme hardship if the applicant's waiver application is not approved, it is unnecessary to examine hardships to the applicant's other qualifying relative, his lawful permanent resident mother.

The record establishes 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,

¹ As noted by the U.S. Department of State:

Defer non-essential travel to other areas in the state of [REDACTED] and travel between cities only on major highways and only during daylight hours. Crime and violence remain serious problems throughout the state of [REDACTED] particularly in the southern portion of the state and in the [REDACTED] including [REDACTED].

conditions and procedures as he 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). We 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 lawful permanent resident spouse, his parents, and his children would face if the applicant were returned to Mexico, regardless of whether they accompanied him or remained in the United States; the fact that the applicant has resided in the United States since 2004 with no apparent criminal record; his business ownership and payment of taxes in the United States; and letters of reference on his behalf.

The unfavorable factors in this matter include the applicant's misrepresentations when procuring admission to the United States.

Although the applicant's immigration violation is serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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.