



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF Z-B-

DATE: DEC. 21, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Georgia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark, New Jersey, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant 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 seeking to procure admission to the United States by fraud or willful misrepresentation of a material fact. The Applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

In a decision dated April 16, 2015, the Director determined that the Applicant's spouse would experience extreme hardship if she relocated to Georgia, but not if she remained in the United States without him. The Director denied the Form I-601 accordingly.

On appeal, the Applicant asserts that separation would cause extreme hardship to his U.S. citizen spouse. The record includes, but is not limited to, statements from the Applicant and his spouse, medical records, a psychological evaluation, educational records, financial records, photographs, and country-conditions information on Georgia. The entire record was reviewed and considered in rendering this decision.

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

- (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:

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- (1) 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.

The record reflects that the Applicant arrived at the [REDACTED] Airport on June 9, 2003, from Brazil, in route to Jamaica. The Applicant entered the United States as a [REDACTED] passenger. In a sworn statement dated June 9, 2003, the Applicant stated that when he purchased his airline ticket to Jamaica via the United States, he had the intent to gain entry into the United States and request political asylum. The record reflects that the Applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States through willful misrepresentation of a material fact. The Applicant does not contest this 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. Hardship to the Applicant and his children can be considered only insofar as it results in hardship to a qualifying relative, in this case the Applicant's spouse. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services (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 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*, 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.

As mentioned, the Director determined that the Applicant established that relocation would result in extreme hardship for his spouse. We will not disturb that finding and will only address the scenario of separation.

On appeal, the Applicant asserts that his household consists of his spouse, his child from a previous marriage, and his spouse’s child from a previous marriage. The Applicant’s spouse states that she would care for her and the Applicant’s children if the Applicant is not present. The Applicant states that his family depends on his income, and were he to relocate abroad, his spouse would not be able to pay for the family’s living expenses. The Applicant has an income of approximately \$40,000 per year, while his spouse has an annual salary of \$25,000. The Applicant further states that were his family to exist on his spouse’s salary alone, their income would be under the Federal Poverty

Guidelines. The Applicant also states that in October 2014, the family home was destroyed by a fire resulting in an additional financial burden.

The Applicant asserts that his spouse is fearful that she will not be able to financially provide for herself and child without the Applicant. The Applicant states that his spouse has a limited support system, and without the Applicant, she will not be able to effectively parent her child because she relies on the Applicant for financial and emotional support. The Applicant asserts that due to his immigration difficulties and the aftermath of the house fire, his spouse has been experiencing feelings of hopelessness, panic, anxiety, and has difficulty making decisions. The Applicant's spouse was evaluated by a psychologist who diagnosed the spouse as having Major Depressive Disorder, as well as Post Traumatic Stress Disorder as a result of the fire. The psychologist states that the Applicant's spouse is experiencing a severe degree of personal stress and is particularly vulnerable to additional stressors. The psychologist concludes that the Applicant's spouse would have significant difficulty managing her health, daily living tasks, finances, and emotional stability if she was separated from the Applicant.

The Applicant's spouse states that she has had difficulty in conceiving and is currently undergoing fertility treatments. The Applicant asserts that if he were to relocate, his spouse would not be able to fulfill her dream of having a child with the Applicant. The record includes a doctor's note reflecting that the Applicant's spouse is under his care for secondary infertility and tests are being done to diagnose the cause of the problem.

The record reflects that the Applicant's spouse would experience significant financial hardship without the Applicant, as the Applicant's salary contributes to more than 60% of the household income. She would also experience hardship based on her fertility concerns. Furthermore, the record demonstrates that the stress caused by a separation would significantly affect the mental health of the Applicant's spouse. In addition, she would be raising her and the Applicant's children without the presence of the Applicant. Considering the totality of the hardship factors presented, and the normal results of separation, we find that the Applicant's spouse would experience extreme hardship if the Applicant was unable to remain in the United States.

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.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

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We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Morales* at 300.

In *Matter of Mendez-Morales*, 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 (citation omitted).

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 section 212(h)(1)(B) 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.*

The favorable factors include the Applicant's U.S. spouse, extreme hardship to his spouse, his lawful permanent resident child, his U.S. citizen step-child, hardship to the children, and his lack of a criminal record. The unfavorable factors include the Applicant's misrepresentation, unauthorized period of stay, unauthorized employment, and December 9, 2003 *in absentia* removal order.

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We find that the favorable factors in the present case outweigh the adverse factors, such that 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.

As the Applicant was ordered removed from the United States and has not remained outside of the United States for the requisite period of time, he is required to file Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

**ORDER:** The appeal is sustained.

Cite as *Matter of Z-B-*, ID# 15037 (AAO Dec. 21, 2015)