



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 09 2015

OFFICE: ALBUQUERQUE

FILE: [REDACTED]

IN RE: [REDACTED]

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:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 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 attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Acting Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Acting Field Office Director*, dated June 9, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer emotional, financial and medical hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse cannot relocate to Mexico to reside with the applicant, as she is a native of the United States with family, friend, employment, medical and property ties only to this country. Counsel also contends that the applicant's child would be unable to access necessary educational resources upon relocation.

In support of the waiver application and appeal, the applicant submitted a letter, a letter from his spouse, a letter from his stepdaughter, letters of support, financial documents, family photographs, medical documents for the applicant and his family members and background country conditions and photographs concerning Mexico. The entire record was reviewed and considered in rendering this decision.

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 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 immigrant 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 the applicant entered the United States with a border crossing card on February 6, 2009, after indicating to immigration officers that he was entering the country to visit friends in New Mexico. The applicant acknowledged that, in actuality, he was entering the United States to rejoin his family members in New Mexico and misrepresented his intent upon entry. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

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 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-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 ●-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.

The record reflects that the applicant is a 48-year-old native and citizen of Mexico. The applicant’s spouse is a 50-year-old native and citizen of the United States. The applicant is currently residing with his spouse, child and stepchild in [REDACTED] New Mexico.

Counsel for the applicant asserts that the applicant’s spouse depends heavily on the applicant and would suffer severe depression and inability to function if separated from him. The applicant’s spouse asserts that she truly loves her husband and she would be depressed and may even lose her job if they were separated. The applicant’s spouse’s sister submitted a letter contending that the applicant’s spouse would be unable to handle a separation from the applicant, is unable to think on her own and would fall into deep depression, giving up on life, in his absence.

Counsel for the applicant asserts that the applicant’s spouse suffers from medical ailments so that she is unable to care for their daughter on her own. Counsel contends that the applicant’s spouse has ongoing medical problems, including severe back and leg pain, bone spurs, severe headaches, allergies, high blood pressure and a debilitating stroke in the 1990s. The record contains bills from a chiropractor and prescription information for the applicant’s spouse. The record also contains medical documentation concerning surgery for the applicant’s spouse following a delivery and hysterectomy.

Counsel for the applicant asserts that the applicant's spouse would be unable to meet her financial obligations without the applicant's assistance. Counsel contends that, in the absence of the applicant, the applicant's spouse would lose her home, be forced to quit her job to care for her child and become a welfare recipient. Counsel submitted an accounting of the applicant's spouse's monthly financial obligations with supporting documentation and asserts that the household expenses equate to 2000 dollars per month. The record also contains pay stubs for the applicant's spouse indicating a biweekly take home pay of 554 dollars.

The applicant's spouse asserts that she works in the evenings so that the applicant helps at home during that time. The record reflects that the applicant's spouse's 22-year-old daughter also resides with the applicant's spouse. There is no indication as to whether the applicant's spouse's older daughter would be able to assist with childcare. The record reflects that the applicant's spouse's older daughter is employed, though there is no information concerning her hours of employment.

The financial documents submitted indicate that the applicant's spouse would be unable to maintain the household bills on her salary alone and medical documentation supports the applicant's spouse's claim concerning the difficulty of raising a minor child without the applicant. In the aggregate, there is sufficient evidence in the record to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Mexico because she is a native of the United States who has resided in northern New Mexico for her entire life. Counsel states that the applicant's spouse is currently residing in her parents' old home, as they are now deceased. The record contains property documents indicating that the applicant and his spouse are the owners of their home.

The record contains a list of the applicant's spouse's family ties in the United States, including her two daughters, with whom she resides, and her sisters and brothers. Counsel asserts that all four of the applicant's spouse's siblings reside in New Mexico, like the applicant's spouse, and the record contains a letter from one of the applicant's spouse's sisters. Counsel also contends that the applicant's spouse would leave behind her physicians, employment, church, lifelong friends and bible study group upon relocation to New Mexico. The record contains 2009 medical records for the applicant's spouse. The record also contains employment documents for the applicant's spouse indicating that she has been employed with the [REDACTED] for the past 20 years.

Counsel asserts that the applicant's spouse's daughter could not join her in Mexico because she needs the educational resources provided in the United States. Counsel further asserts that the applicant's spouse and her daughter would be in danger if they relocated to Mexico with the applicant. The record contains documents indicating that the applicant's spouse's youngest daughter suffers from developmental delays. It is noted that the applicant's spouse's children are not qualifying relatives in the context of this application so that any hardship they would experience will be considered only insofar as it affects the applicant's spouse. However, it is also noted that the record contains a travel warning for Mexico, issued by the U.S. Department of

State, dated January 9, 2014, stating that crime and violence remain serious problems throughout the state of [REDACTED] the place of the applicant's birth. As such, the applicant's spouse has demonstrated longstanding and varied ties to the United States, her concern for her child's development in Mexico and fear for the safety of her family. The record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Mexico.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if his 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 her 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:

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.

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.* at 301.

The favorable factors include the extreme hardship the applicant's spouse would experience whether she remained in the United States, separated from the applicant, or accompanied the applicant in Mexico, as well as hardship to the applicant's U.S. citizen daughter and stepdaughter, the letters of support submitted on the applicant's behalf and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter include the applicant's misrepresentation to immigration officers.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, 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.

**ORDER:** The appeal is sustained. The waiver application is approved.