



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 10 2015

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Spokane, Washington denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Mexico who was found 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 seeking admission within ten years of her last departure from the United States. She is also 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 procuring admission to the United States through willful misrepresentation of a material fact. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. She denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated June 30, 2014.

On appeal, the applicant, through counsel, states that her qualifying spouse would suffer extreme psychological, medical, educational and financial hardships upon separation from the applicant. The applicant also indicates that, upon separation, he would have the burden of being a single father to a child with special needs. The applicant also indicates that he cannot relocate to Mexico because he has lived almost his entire life in the United States and would experience financial hardships and safety concerns living in Mexico.

The record includes, but is not limited to, letters and briefs written on behalf of the applicant; letters from the qualifying spouse, his parents, his siblings, his aunt, his professors and a teacher, his employer, the applicant and her father and friends; medical and mental health documentation for the applicant and the qualifying spouse; financial documentation; educational and psychological documents regarding their son; articles regarding the cost of child care; identification documents for the applicant and qualifying spouse; a newspaper article and obituary regarding the qualifying spouse's uncle; and family photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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.

....

- (v) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] 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 . . . 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.

The record indicates that the applicant first entered the United States in 2003 without inspection, and departed in 2006. The applicant accrued unlawful presence from [REDACTED] 2004, when she turned 18 years old, until 2006 when she voluntarily departed, a period in excess of one year. The applicant returned to the United States in September 2007 with a visa and there is no indication that she has since departed. In applying for adjustment of status, the applicant is seeking admission within ten years of her last departure from the United States.

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

- (i) In general. 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 chapter is inadmissible.

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

- (1) The Attorney General [now Secretary 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 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 [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 applicant provided false information in order to obtain a visa to the United States. Specifically, the applicant stated that she misrepresented the amount of time that she had spent in the United States as three months in submitting her visa application. Accordingly, the applicant procured admission to the United States through the willful misrepresentation of a material fact.

As a result of the applicant's unlawful presence and willful misrepresentation, she is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 or her child 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 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 at 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.

Regarding the hardship that the applicant’s qualifying spouse were to experience if he remains in the United States while the applicant resides in Mexico, he states that he will suffer from psychological, medical, educational and financial hardships. A letter from a mental health specialist indicates that the applicant’s spouse is suffering from severe anxiety, depressed mood and has difficulty concentrating. As a result of these symptoms, the applicant’s spouse was referred for individual therapy. A psychological evaluation of the qualifying spouse also states that he is sleep disturbed, which affects his performance at work, and that he is on the edge of mental and physical collapse. The evaluation further states that the applicant is experiencing feelings of hopelessness, is terrified of losing his family and worried about his mother’s mental health. The record confirms that the qualifying spouse’s mother is suffering from anxiety and stress, for which she is taking medication, as she is fearful of her son’s family’s safety if they relocate to Mexico. The record reflects that the applicant’s spouse’s mother experienced the death of several family members, including her brother and two cousins, when they returned to Mexico.

The qualifying spouse asserts that it would be devastating for him to lose his wife and painful for him to see his son separated from his mother. He states that he remembers, prior to his coming to the United States, how difficult it was for him to grow up without his father, who was working hard to support his family in the United States. He also asserts that thinking about it “brings tears to [his] eyes... knowing that [his] son could relive [his] own experience” and it “completely devastates [him] and tears [him] apart inside.” The applicant’s spouse further indicates that it would be a hardship for him to be a single parent, especially since his son has special needs. In support of this assertion, the applicant submitted documentation demonstrating that her son is receiving early intervention assistance with his speech.

The applicant's qualifying spouse contends that he is suffering from obesity and needs his wife to help him make healthy changes in his life. The applicant provides medical documentation reflecting a history of her spouse's health issues, including, but not limited to, obesity, back pain, gastroesophageal reflux disease, hypothyroidism, hyperlipidemia and a family history of diabetes. The qualifying spouse states that, if the applicant returns to Mexico, he will have to work all the time and suffer without her assistance in supporting his health.

With regard to the qualifying spouse's financial hardships upon separation, he asserts that buying a home is one of the greatest achievements in his life, and that without his wife, he would lose it and everything else. He contends that he depends on his wife's income to pay for the mortgage and his student loans. The record contains documentation of the applicant and qualifying spouse's income and expenses, including their mortgage and the qualifying spouse's student loan obligations. The record indicates that the applicant and qualifying spouse earn about the same amount of money, approximately \$25,000 annually each. Counsel asserts that the applicant took some time off work for the birth of their son, but thereafter returned to work.. The applicant asserts that her spouse would be unable to afford childcare if she returns to Mexico, given the mortgage and other expenses. Counsel asserts that the applicant was pregnant with the couple's second child at the time of appeal. In addition to documentation demonstrating the applicant's household's financial status, the record also includes articles about the costs of child care stating that Oregon was the least affordable state for infant childcare in 2012. The record demonstrates that in the absence of the applicant, the qualifying spouse would have difficulty meeting his current financial obligations, in addition to making child care payments.

The qualifying spouse also asserts that he wants to finish his school and obtain his degree. Although he attended his graduation ceremony, he contends that he requires one additional credit to complete school and provided a letter from his school to support this assertion. The qualifying spouse states that he was the first in his family to finish high school and go to college, and feels privileged to have had such opportunity. He indicates that he requires the applicant's financial and emotional support to realize his goal of graduating from college. Considering the evidence of the psychological, medical issues, financial and educational hardships in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship if he were to remain in the United States without the applicant.

Concerning the hardship that the applicant's spouse would experience if he were to relocate to be with the applicant, the applicant states that he was only six or seven years old when he came to the United States, and has lived most of his life in the United States. He also indicates that his brothers, sister and mother are all U.S. citizens and his father is a legal permanent resident. He describes his family as being united and the record contains letters of support from family members and friends. The qualifying spouse's high school teacher states that his family is close-knit and that it would be devastating for them to separate, as they are all dedicated to one another. The qualifying spouse also indicates that he no longer has family in Mexico, as his grandparents now live in the United States. The qualifying spouse asserts that he does not want to live in Mexico where he would fear for his life. The letters from the applicant's qualifying spouse, his siblings, his mother and his aunt, all support his assertions that he would be fearful to reside in Mexico because his uncle, a U.S. citizen, was murdered there upon visiting family. The record

contains a newspaper article and obituary relating to the qualifying spouse's uncle death while in Mexico.

With regard to the financial hardships the applicant's spouse would suffer if he relocated to Mexico, the qualifying spouse states that moving to Mexico would mean leaving his mortgage and student loans unpaid and losing everything for which he has worked. The record contains evidence of his mortgage, demonstrating that he owns property in the United States, and of student debt. The qualifying spouse's employer provided two letters, one indicating that he has been working for his company since 2009 and that he is an asset to the company, which fights wildfires. As such, if the qualifying spouse relocated to Mexico, he would lose his long-term employment. According to the qualifying spouse's former professor, the applicant's spouse has strong community ties, and has been very active in the Latino community and in his church, participating as a volunteer minister. Considering the evidence of his hardship in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico with the applicant due to his length of residence in the United States, his strong family and community ties to the United States, his lack of family ties to Mexico, his property and financial ties to the United States and his fear for his safety in Mexico.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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.

In *Matter of Mendez-Moralez*, 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 relief must bring forward to establish that she 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 in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether he accompanied the applicant or remained in the United States; her ties to the United States, including to her U.S. citizen child and her husband's entire family, who are very supportive of her application; her payment of taxes; her lack of a criminal record; and the letters of support addressing her good character. The unfavorable factors in this matter are the applicant's misrepresentation and unlawful presence in 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 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 her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.