

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



(b)(6)



DATE: JUL 31 2015

FILE: [REDACTED]
RECEIPT #: [REDACTED]

IN RE: Applicant: [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:



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, San Francisco, California, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record establishes that the applicant is a native and citizen of Mexico who was found 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 having procured entry into the United States 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.

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, accordingly.

In support of the appeal counsel for the applicant submits a brief, declarations from the applicant and his spouse, mental and medical health documentation pertaining to the applicant's spouse, letters in support of the applicant, financial documentation, documentation regarding the applicant's spouse's relatives, family photographs, and information about country conditions in 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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 . . .

Regarding the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation, the record establishes that the applicant did not disclose his intent to reside in the United States with his then-U.S. citizen boyfriend (now his spouse) when he procured entry to the United States in January 2013 with a B1/B2 Visa/Border Crossing Card. The applicant was thus 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 procured entry to the United States by fraud or willful misrepresentation. On appeal, 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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 v. I.N.S.*, 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 applicant’s U.S. citizen spouse asserts that he will suffer emotional and medical hardship were he to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration he explains that long-term separation from his husband would cause him emotional hardship. He states that even though he has had much tragedy in his life, including the death of his parents and the unexpected death of his sister, none of these events impacted him as much as the prospect that his husband may have to relocate abroad due to his inadmissibility. In addition, the applicant’s spouse details that he suffers from numerous medical conditions, including prostate cancer, and he relies on his husband’s daily support.

In support, the applicant has submitted extensive medical and mental health documentation, including medical records and evidence of medications prescribed to the applicant’s spouse, establishing that his husband is being treated for numerous medical conditions, including but not limited to, prostate cancer monitoring and follow-up, hypertension, hyperlipidemia, attention deficit disorder, type II diabetes, and he will require surgery for a newly diagnosed condition. Furthermore, the record establishes that the applicant’s spouse has been diagnosed with Major Depressive Disorder and has been taking anti-depressants for extended periods. Moreover, letters in support have been provided from the applicant’s spouse’s family members and friends outlining the hardships the applicant’s spouse would experience were his husband to relocate abroad as a result of his inadmissibility. Finally, we note that a travel warning has been issued to all U.S. citizens noting that

all non-essential travel to most of the State of [REDACTED], the applicant's birthplace, should be deferred. Said warning also references that one of Mexico's most powerful criminal organizations is based in the state of [REDACTED], and violent crime rates remain high in many parts of the state. Moreover, the travel warning notes that caution should be exercised in the State of [REDACTED], where the applicant was raised, and further references that non-essential travel should be deferred to certain areas of the state that border the states of [REDACTED] and [REDACTED] due to the unstable security situation. The record reflects that the cumulative effect of the emotional and medical hardship the applicant's spouse will experience were his husband to relocate abroad due to his inadmissibility rises to the level of extreme. We conclude that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

With respect to relocating abroad to reside with the applicant as a result of his inadmissibility, the record reflects that the applicant's spouse was born and raised in the United States. He has been gainfully employed since January 2001, has health care coverage from his work, and owns a home. His three children and grandchildren reside in the United States. Further, the record establishes the applicant's spouse's medical conditions and the need for continued affordable and effective medical treatment by the physicians familiar with the applicant's spouse's medical conditions and treatment plan. Further, as noted above, the U.S. Department of State has issued a travel warning for Mexico specifically referencing [REDACTED] the applicant's birthplace, and [REDACTED] where the applicant was raised. Finally, the applicant states that they would live in fear because of violence and discrimination against homosexuals in Mexico, and the U.S. Department of State warns U.S. citizens they should exercise discretion in identifying themselves publicly as lesbian, gay, bisexual, and/or transgender (LGBT) individuals while in Mexico. *See* U.S. Department of State, Bureau of Consular Affairs, *Country Information for Mexico*. The applicant has thus established that his husband would suffer extreme hardship were he to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find 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, conditions and procedures as she 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). This office 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 hardship the applicant's U.S. citizen spouse would face if the applicant were to relocate to Mexico, regardless of whether he accompanied the applicant or stayed in the United States; support letters on behalf of the applicant; gainful employment in the United States; community ties; and the apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's periods of unlawful presence while in the United States and fraud or willful misrepresentation as outlined in detail above.

The violations committed by the applicant are serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's 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.