



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUN 26 2015

FILE: [REDACTED]
APPLICATION 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:



INSTRUCTIONS:

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, Houston, Texas, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse and children.

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 and denied the waiver application accordingly. *See Decision of the Field Office Director* dated August 7, 2014.

On appeal the applicant contended that the field office director erred by not giving her the opportunity to submit additional evidence since her application had been filed in 2004. We issued a request on March 3, 2015, for the applicant to submit evidence pertaining to any hardship her spouse will experience in the event the applicant departs the United States, whether her spouse remains in the United States or accompanies her to Mexico, and any other updated evidence concerning her eligibility for relief. In response to that request the applicant submits a statement from her spouse, letters from her children describing her importance to them, a psychological evaluation for the applicant's family, financial documentation, medical documentation for the applicant's son, school records for the applicant's children, a letter of support from the family pastor, and country information for Mexico. The record contains previously-submitted statements from the applicant and her spouse, letters of support from friends and relatives of the applicant and her spouse, psychological assessments for the applicant, medical documentation, school records for the applicant's son, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485).

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 that:

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 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 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 attempted to enter the United States at [REDACTED] California, on November 10, 1996, using an I-586 border crosser card issued to another person. The applicant was placed in exclusion proceedings and ordered excluded and deported by an immigration judge, then deported from the United States on November 14, 1996. The applicant re-entered the United States without inspection later in November 1996. On September 27, 2004, the applicant filed a Form I-601, Application for Waiver of Ground of Excludability and Form I-212, Application for Permission to Reapply for Admission to the United States After Deportation or Removal. On January 25, 2010, the field office director denied both applications after determining that the applicant was subject to reinstatement of a deportation order and therefore ineligible for any form of relief pursuant to section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5), and must file Forms I-601 and I-212 from a consulate abroad. The applicant appealed the denial of Form I-212, and on October 5, 2010, we determined that the applicant's deportation order had not been reinstated so she was eligible to file applications for permission to reapply for admission and a waiver of grounds of inadmissibility. The case was remanded for a full decision on the merits. The record shows that the Form I-601 was then denied on August 8, 2014, without the applicant having the opportunity to supplement the record with updated evidence of hardship to her qualifying relative.

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 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. *Salcido-Salcido v. INS*, 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 asserts that her spouse would suffer emotional hardship due to separation from her and that her children would also suffer hardship, which would cause hardship to her spouse. The applicant’s spouse states that he and the applicant have been together for more than 18 years and that he feels stress, anger, and frustration because they have been fighting the applicant’s immigration case for more than 10 years. He states that the applicant cares for the children, takes them to school, and involves them in church, and that their teenage children face bad influences and the applicant picks them up from school to keep them from the wrong people. The spouse states that he cannot rely on the older children to care for the younger ones, and that if the applicant is in Mexico he would worry about the safety of the children at home alone and about the applicant being the target of extortion from people who think she has money because she lived in the United States. The applicant also states that her spouse would be concerned for her safety in Mexico due to violence and crime there.

A psychological evaluation of the applicant and her family notes that they have a traditional arrangement of the applicant caring for the children while the spouse works. It describes the roles of each parent and, noting the stages of children's development, states that a changing environment would be detrimental to them. The evaluation states that the applicant and her spouse have no extended family in Texas to assist with the children, and that without the applicant her spouse would become less emotionally available, causing drastic changes in the children's routines. It also notes that one of the applicant's sons has asthma, which would worsen if the stress level in the family rises.

The applicant also asserts her spouse would experience economic hardship if she were to return to Mexico. The applicant's spouse states that he works long hours to support his family, but without the applicant to provide care for the children he would need to spend more hours working. He also believes that he would be unable to support the applicant in Mexico. The applicant states that she has no formal education and has not worked since she has been raising children, so she would have limited employment opportunities in Mexico. She states that even if she found a job it is unlikely she would earn enough to support herself and be able to send money to her spouse, who would provide for two households. She further states that it would be expensive for her spouse to take the family to visit her in Mexico. Financial documentation submitted to the record includes income tax information, a mortgage statement, credit card statements, and utility billing statements.

Having reviewed the preceding evidence, we find it to establish that the applicant's spouse would experience extreme hardship due to his separation from the applicant. In reaching this conclusion, we note that the spouse would be concerned about providing care for five children, four of whom are minors, while being concerned about the applicant's safety in Mexico and supporting two households.

The applicant also asserts that her spouse would experience extreme hardship if he were to reside in Mexico. The applicant states that her spouse is from El Salvador and he would be unable to find a career position in Mexico because he has no connections there, and he would be unable to get a manual labor job because of his age. She also notes that the crime rate is high and that she does not want to move her children there.

The applicant's spouse states that he has been in the United States since he was nine years old, does not know what type of employment he could find in Mexico, and fears the violence there. He states that the United States is home to his children, whom he asserts could not go to school in Mexico because they do not understand Spanish. The psychological evaluation notes that if the applicant's children relocated to Mexico they would experience stress due to the daily violence there that they have never had to face, and that they could suffer health and behavior issues causing stress in the family. The spouse states that the applicant's family, including her adult siblings, lives in a small house in a small town in Mexico and that he already sends money because they cannot support themselves. The spouse further states that he is paying into a pension plan through his employment as a corrections officer with the State of Texas and that his children have health insurance through him, which they would lose in Mexico.

Country information submitted to the record includes a U.S. Department of State travel warning for Mexico, dated May 5, 2015, that notes risks in traveling to parts of the country, including the state of Jalisco, where the record indicates the applicant's family resides. The applicant also submitted U.S. Department of State Country Reports on Human Rights Practices for 2013 for Mexico along with news accounts of violence.

We find the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Mexico. He would be forced to give up his home and employment while being concerned about his safety and that of his children, if they were to accompany him, as well as his financial well-being in light of the lack of employment opportunities in Mexico.

Further, the record establishes that the applicant's children, four of whom are natives and citizens of the United States, are integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. Four of the applicant's children are in school and they do not speak Spanish. To uproot them at this stage of their education and social development to relocate to Mexico would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were they to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from his children.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

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 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 in this matter are the hardships the applicant's U.S. citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from her spouse and children, her activity with her church, her lack of criminal activity, and the passage of time since her immigration violation. The unfavorable factor in this matter is the applicant's attempted entry to the United States by misrepresentation.

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.