



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

(b)(6)

Date **MAY 18 2015**

Office: LOS ANGELES

FILE: [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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Mexico, 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), 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 (Form I-601) accordingly. *See Decision of the Field Office Director*, May 20, 2014.

On appeal, the applicant contends that his qualifying relative will suffer extreme hardship if the waiver application is denied, and submits additional evidence of hardship to his spouse.

The record includes, but is not limited to, the following documentation: statements from the applicant and the applicant's spouse, financial documentation, psychological evaluations for the applicant's spouse, the birth certificate and other documentation related to the birth of the applicant's daughter, letters of reference, and background country condition information for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the applicant attempted to enter the United States on December 6, 1994 by declaring to be a returning resident and presenting a photo-substituted Form I-551, Alien Registration Receipt card belonging to another person. The applicant is inadmissible under section 212(a)(6)(C) of the Act for attempting to procure admission to the United States through fraud or misrepresentation. The applicant does not contest his inadmissibility.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We further note that on [REDACTED] 1995, the applicant was apprehended by U.S. Border Patrol Agents while driving a vehicle near [REDACTED] Texas. During the apprehension, the applicant claimed to be a United States citizen, and therefore is further inadmissible under section 212(a)(6)(C) of the Act for attempting to procure an immigration benefit through fraud or

misrepresentation. On [REDACTED] 1995, the applicant pled guilty to illegal entry into the United States.

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

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.

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 U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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. INS*, 138 F.3d 1292, 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.

The applicant contends that his spouse will suffer financial hardship if the waiver application is not approved. The record indicates that the applicant’s spouse received training to be a medical assistant in 2010, but there is no indication in the record that she has found employment in this field. A psychological evaluation of the applicant’s spouse states that she is not working due to her disabling levels of depression and anxiety. The applicant’s spouse asserts that she is not employed, stays home as a housewife, and takes care of their child, born in [REDACTED] 2014. The psychological evaluation of the applicant’s spouse also states that her depressive symptoms have increased to the point that she has difficulty waking and caring for her daughter.

The applicant’s spouse states that she and the applicant live with her parents, as they are unable to afford their own home. The applicant’s spouse also states that she has \$13,000 in school loans. Copies of federal income tax returns from 2012 and 2013 indicate that the applicant’s spouse is a housewife/homemaker, and has no income. The evidence submitted to the record

indicates that the applicant's spouse has no independent income and is sufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence, resulting in hardship.

The applicant also contends that his spouse will suffer emotional and psychological hardship if the waiver application is not approved. The record includes a psychological evaluation by a licensed clinical psychologist for the applicant's spouse, dated May 10, 2013 and submitted with the applicant's Form I-601, which provided the diagnosis of major depressive disorder, single episode, moderate, and generalized anxiety disorder. The evaluation indicates that the depression symptoms for the applicant's spouse started when the applicant's immigration problems began, and the applicant's presence is vital to her stability, motivation, and physical and emotional well-being. The evaluation noted that the applicant's spouse was taking anti-depressant medication to help her with her depression, and the record includes copies of prescriptions for the anti-depressant drugs prescribed by her physician. The evaluation recommended that the applicant's spouse participate in psychotherapy sessions.

On appeal, the applicant submits a second psychological evaluation, by a licensed clinical social worker, which indicates that depression and anxiety dominate the clinical picture for the applicant's spouse, and also provides the diagnosis of major depressive disorder, single episode, moderate severity, and generalized anxiety disorder. The second evaluation notes that the applicant's spouse is under a doctor's care for major depressive disorder and anxiety, and taking anti-depressant medication. The evaluation further states that the applicant's spouse's anxiety and depressive symptoms have increased with intensity and frequency over time and have exacerbated to the point that the applicant's spouse does not have the ability to live a normal and functional life. The applicant's spouse states that she has been going to therapy sessions with a doctor and taking medication.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial and emotional hardship as a result of her separation from the applicant, as well as the hardships she would experience due to her concern for about providing care and support for her child without the financial and emotional support provided by the applicant. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

Regarding hardship that the applicant's spouse may experience if she were to relocate to Mexico, the record indicates that the applicant's spouse was born in United States, and has strong family ties in the United States, including her U.S. citizen daughter, as well as her parents and siblings. Although the family of the applicant's spouse is originally from Mexico, there is no indication in the record that the applicant's spouse maintains any close family ties in Mexico. The record reflects that the applicant's spouse has been residing in California for her entire life.

In addition, the applicant's spouse states that moving to Mexico would be dangerous for her and her daughter. The U.S. Department of State has issued a travel warning for Mexico specifically

referencing the state of Zacatecas, where the applicant is from originally, and Baja California, where the applicant most recently resided in Mexico. With respect to Zacatecas, the travel warning states:

Exercise caution in the state of Zacatecas. Robberies, carjackings, and organized criminal activity remain a concern. U.S. government personnel may travel outside the city of Zacatecas only during daylight hours on toll roads, and must return to the city of Zacatecas to abide by a curfew of 1 a.m. to 6 a.m.

*See Travel Warning-Mexico, U.S. Department of State, dated May 5, 2015.*

With respect to Baja California, the travel warning states:

Exercise caution in the northern state of Baja California, particularly at night. Criminal activity along highways is a continuing security concern. According to the Baja State Secretariat for Public Security, from January to October 2014 Tijuana and Rosarito experienced increasing homicide rates compared to the same period in the previous year. While most of these homicides appeared to be targeted criminal organization assassinations, turf battles between criminal groups have resulted in violent crime in areas frequented by U.S. citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours.

*Id.*

Thus, considered in the aggregate, the record evidence establishes that the situation presented in this application rises to the level of extreme hardship to the applicant's spouse whether she remains in the United States or relocates to Mexico with him. 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). The AAO 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 hardships the applicant's U.S. citizen wife and daughter would face if the applicant were returned to Mexico, regardless of whether they accompanied him or remained in the United States; the evidence of the applicant's employment and payment of taxes in the United States; and letters of reference submitted on his behalf. The unfavorable factors in this matter are his misrepresentations regarding his immigration status in the United States in 1994 and 1995 and criminal conviction for illegal entry into the United States.

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.