



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-G-L-

DATE: NOV. 10, 2015

APPEAL OF COLUMBUS FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Columbus, Ohio, denied the application. The matter is now before us on appeal. The appeal will be sustained.

On March 10, 2015, the Director determined that the Applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation. The Director concluded that the Applicant had not established that refusal of admission to the United States would result in extreme hardship to a qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief, income tax records, and copies of identification documents and health insurance cards. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act states:

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 further provides:

- (1) The [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.

The record shows that in June 2005, the Applicant procured admission into the United States by presenting a fraudulent Form I-551, Temporary Evidence of Lawful Permanent Residence, stamp

that she had bought in Mexico. This finding of inadmissibility is not contested on appeal. The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.

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 record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or her in-laws 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 U.S. Citizenship and Immigration Services 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 *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 (Reg'l 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 (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 declares that he will experience extreme hardship if he remains in the United States while his spouse relocates abroad as a result of her inadmissibility. The Applicant’s spouse asserts that he is stressed over impending separation from the Applicant and their problems in starting a family. He indicates that they have been together for over a decade, and he worries that in Mexico the Applicant’s physical safety would be at risk. The Applicant’s spouse also maintains that his parents have numerous medical conditions and the Applicant plays an important role in their daily care and without her presence, he will have to care for his parents on his own, thereby causing him hardship.

In support of emotional hardship, the Applicant has submitted mental health assessments establishing that her spouse is experiencing increased anxiety and stress regarding the Applicant’s impending deportation. The evaluator recommends therapy for the Applicant’s spouse. The Applicant’s spouse also provided a medical record which shows that he may need treatment for infertility. Further, medical documentation has been provided establishing the health care issues relating to the Applicant’s spouse’s parents, who reside with the Applicant and her spouse. The Applicant has also submitted evidence demonstrating that the U.S. Department of State has issued a Travel Warning for Mexico due to threats to safety and security posed by organized criminal groups. Based on a totality of the circumstances, the record establishes that the Applicant’s spouse will experience extreme hardship if he remains in the United States while the Applicant relocates abroad.

In regard to relocation abroad with the Applicant as a result of her inadmissibility, the Applicant’s spouse asserts that he will have to give up a life that took him fifteen years to build. He states that he has worked at a construction company since 2007 and now is a supervisor, and references wage information to establish that in Mexico he would earn significantly less in the same position. He declares that he will lose the healthcare which he now has and that healthcare and infertility

treatments in Mexico would be unaffordable. He further asserts that his parents currently live with him and he will not be able to properly care for them if he is residing abroad. The Applicant's spouse also asserts that he will worry about his physical safety. In her own statement, the Applicant contends that her spouse will experience extreme hardship if he relocates to Mexico. She asserts that infertility treatments and medical care for other health problems will be unaffordable, her spouse will have to sell his home in the United States at a loss, he will not be able to continue supporting the Applicant's family in Mexico, and her spouse will be forced to separate from his family in the United States.

In addition to the Travel Warning for Mexico, the Applicant's spouse submitted a letter from his employer establishing his wage and position, financial records showing that he supports extended family members, and copies of permanent resident cards for his parents. Documentation in the record also establishes that the Applicant and her spouse reside with the Applicant's spouse's parents, who rely on them for daily care and economic support. The record establishes that the Applicant's spouse has resided in the United States for over fifteen years, and long-term separation from his community, gainful employment, and family members, will cause him considerable hardship. Based on a totality of the circumstances, the record establishes that the Applicant's spouse would experience extreme hardship if he relocated with the Applicant to Mexico as a result of her inadmissibility.

The Applicant has established that the bar to admission would result in extreme hardship to her U.S. citizen spouse. We now address whether the Applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the Applicant 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, 21 I&N Dec. 296, 301 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane

Matter of V-G-L-

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.

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and in-laws would face if the waiver application were denied, the payment of taxes, community ties in the United States, and the Applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation, as outlined in detail above, and periods of unlawful presence in the United States. In this case, when the favorable factors are considered together, they outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has met that burden.

ORDER: The appeal is sustained

Cite as *Matter of V-G-L-*, ID# 14478 (AAO Nov. 10, 2015)