



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

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

MATTER OF M-D-R-R-C-

DATE: NOV. 12, 2015

APPEAL OF RENO 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, Reno, Nevada, denied the application. The matter is now before us on appeal. The appeal will be sustained.

On February 25, 2015, the Director denied the application finding that the Applicant was inadmissible for seeking admission into the United States by fraud or willful misrepresentation, and that refusing the Applicant admission into the United States would not result in extreme hardship to her lawful permanent resident mother. The Director further noted that a favorable exercise of discretion was not warranted.

On appeal, the Applicant submits a brief, an affidavit, a document on surnames, a map, and a Board of Immigration Appeals decision. 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.

With respect to the Director's finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation, the Applicant contends that she did not sign an asylum application on her own behalf, and in the alternative, even if she signed the asylum application, it was not to avail herself of any immigration benefits. Further, the Applicant maintains that any false testimony on the asylum application is immaterial and does not subject the Applicant to inadmissibility under section 212(a)(6)(C)(i) of the Act.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the Applicant's misrepresentations were material if either the Applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The record establishes that the Applicant is inadmissible for fraud or willful misrepresentation. The record contains an asylum application on the Applicant's behalf. Although the Applicant claims that she did not sign the asylum application but was the victim of identity theft, we note that the Applicant admitted in a sworn statement on July 14, 2014 that she signed the fingerprint card filed with the asylum application. In addition, in documentation to the Ninth Circuit Court of Appeals, the Applicant herself referenced her signature on the asylum application as not being a match to the signature on the certified mail return receipt, to establish that she had not signed the return receipt. The burden of proving eligibility remains entirely with the applicant. Section 291 of the Act. In this case, the record establishes that the Applicant signed the asylum application.

With respect to the Applicant's claim that even if we found that she had signed the application, she did not do so to obtain an immigration benefit, we note that the Applicant signed a fraudulent asylum application to obtain immigration benefits, including the ability to remain in the United States and ultimately, obtain asylum. As for the Applicant's assertion that she did not give false material testimony on her asylum application, the record indicates that the Applicant's basis for asylum was directly related to her mother's purported employment. However, the Applicant admitted that her mother was a housewife and was thus not persecuted based on her employment, as the asylum application claimed. The misrepresentations were directly material to the Applicant's request for asylum based on persecution, an immigration benefit under the Act.

Finally, the Applicant states that because the Board dismissed the deportation order against her, she is not inadmissible for misrepresentation. The record indicates that the Board granted a joint motion to reopen proceedings solely to allow the Applicant to pursue an adjustment of status application, and did not address inadmissibility. The Applicant therefore remains inadmissible under section 212(a)(6)(C) of the Act for fraud or willful misrepresentation.

A waiver of inadmissibility under section 212(i) of the Act is dependent on 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 lawful permanent resident mother is the only qualifying relative in this case. Hardship to the Applicant or her children 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.

In her affidavit, the Applicant’s mother asserts that she will experience extreme hardship if she remains in the United States while the Applicant relocates abroad as a result of inadmissibility. She states that she is ninety-one years old and has lived with the Applicant for over two decades. The Applicant’s mother declares that she takes medication for health problems, and the Applicant is her only caregiver because her other family members have no interest in her. In addition, she asserts that her supplemental security income (SSI) benefits barely cover her living expenses and the Applicant helps support her. She maintains that she would be devastated if separated from the Applicant.

In support of her hardship claim, the Applicant’s mother submitted evidence establishing her Medicare and SSI benefits. She further provided a letter from her doctor which states that the Applicant’s mother is frail, hearing impaired, and cannot drive, and that the Applicant is her primary caregiver. The Applicant also submitted medical records establishing that her mother takes medication for hypertension, hip and shoulder pain, and gastroesophageal reflux disease. If the Applicant’s mother, born in 1923, remained in the United States without the Applicant, she would suffer significant emotional and financial hardship. When the evidence is considered in the totality, the record establishes that the Applicant’s mother will experience extreme hardship if she remained in the United States while the Applicant relocates abroad.

Regarding relocating abroad due to the Applicant’s inadmissibility, the Applicant’s mother contends that she has not been to Mexico for two decades and has no family ties to Mexico. She states that the Applicant does not have the work skills to support them, and they would have substandard living conditions and medical care. She maintains that she would lose the SSI and Medicare benefits

which she now has, and the government in Mexico would not provide her with financial assistance or healthcare.

The Applicant has submitted evidence establishing that the Department of State has issued a Travel Warning and Travel Alert for Mexico due to violence linked to drug-trafficking. In addition, the record establishes that the Applicant's mother became a lawful permanent resident in 1989, more than twenty-five years ago, and long-term separation from her community, her extended family, and the affordable and effective medical professionals familiar with her treatment plan, will cause her considerable hardship. When the evidence is considered together, the record establishes that the Applicant's mother will experience extreme hardship if she relocated abroad with the Applicant.

The Applicant has established that the bar to admission would result in extreme hardship to her qualifying relative mother. 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 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 lawful permanent resident mother and four children, including a daughter who has epilepsy and cerebral palsy, would face if the waiver application were denied, community ties, the numerous letters from community representatives which attest that the Applicant is a person of good moral character and has spent years volunteering in her community, 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, the Applicant's placement in removal proceedings, and periods of unlawful presence

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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 under section 212(a)(6)(C)(i) of the Act, 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 M-D-R-R-C-*, ID# 14159 (AAO Nov. 12, 2015)