



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

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

MATTER OF J-R-A-

DATE: NOV. 17, 2015

APPEAL OF LOS ANGELES 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, Los Angeles Field Office, denied the application. The matter is now before us 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 Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen mother and children.

In a decision dated February 9, 2015, the Director found that the Applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The waiver application was denied accordingly.

On appeal the Applicant asserts that the decision failed to consider the emotional impact on his mother, general hardship to him and his relatives, his family responsibilities, and evidence he is reformed. With the appeal the Applicant submits a brief and updated declarations from his mother, his children, and himself; updated psychological evaluations for the Applicant and the Applicant's mother; a statement from the mother's medical doctor; biographic documentation; court records; financial documentation; and country 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.

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 procure entry to the United States in 1973 by presenting a fraudulent baptismal certificate from the State of Colorado showing that he was born in the United States. Based on this information the Director determined the Applicant was inadmissible under section 212(a)(6)(C) of the Act for fraud or misrepresentation. The Applicant has not disputed the 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 mother 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-Moralez*, 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.

On appeal the Applicant asserts that his mother has suffered depression since the 2005 death of his former common law spouse with whom she was emotionally close, and the 2010 death of his mother's spouse. The Applicant states that his mother lives alone in a seniors-only project where, because he works with a temporary employment agency, he has the flexibility to visit daily when he can take her shopping or to see her doctor. A 2013 letter from the manager of the mother's residence states that the Applicant's mother is ill and that the Applicant often takes her to her doctor and assures that she takes her medication. In a March 5, 2015 statement the Applicant's oldest daughter describes the Applicant's importance to his mother and states that she will break down without the Applicant.

In her own statements, the Applicant's mother maintains that she is becoming forgetful and that the Applicant visits daily, takes her to doctor appointments, gets her medication when it runs low, and purchases groceries for her. She maintains that although she and her husband had not been together for many years they had remained close and his death affected her greatly, particularly after the death of the Applicant's former common law spouse and her young daughter. The mother states that

she is concerned for the Applicant in Mexico because he is not young anymore, has no one there to help him, and will have no job, and that she fears for his safety because of crime there.

Medical documentation in the record from 2015 establishes that the Applicant's mother suffers from angina of the heart, major depression, and osteoarthritis that limits her mobility, and that she is generally isolated. The documentation further establishes that the Applicant's mother needs the Applicant as he is the main individual to provide her care. A letter from another medical doctor, dated September 30, 2013, states that the Applicant's mother has been diagnosed with stroke, recurrent depression, hypertension, osteoporosis, and hypercholesterolemia, and has a complex regimen of medications that requires assistance, primarily from the Applicant. A letter from another attending physician, dated May 21, 2010, lists several medical conditions and states that the mother had been treated for psychiatric problems since November 2006. Additional letters from medical doctors in 2008 also indicate the mother had been treated for depression and other physical ailments, and that the Applicant was her primary care giver.

A psychological evaluation of the mother, dated June 14, 2010, stated that she was unable to care for herself and indicated that she was emotionally traumatized by the 2005 death by auto accident of the Applicant's common law wife that exacerbated her pre-existent depression for which she was under anti-depressants. The evaluation diagnosed the mother with major depression, recurrent panic attacks and dementia cognitive disorder, and opined that her depression would deteriorate. The record also contains a list of medications prescribed to the Applicant's mother from 2003 through 2010 that included anti-depressants.

An updated psychological evaluation of the Applicant's mother, dated April 16, 2015, provides the same diagnosis and opines that the possibility of the Applicant being forced to leave is devastating to her because she will face the loss of love and companionship, will have anxiety over his safety, and will likely become further depressed. The evaluation states that the mother fell in September 2014, fracturing her arm, and had surgery and loss of strength. It further states that the Applicant and grandchildren visit every day and the Applicant is attentive to his mother's needs.

The Applicant and his mother further assert that the mother receives social security income, with which she confirms she pays her rent, but that she receives additional money from the Applicant.

Having reviewed the preceding evidence, we find it to establish that the Applicant's mother would experience extreme hardship resulting from her separation from the Applicant. The record reflects that the Applicant provides daily assistance to his mother, whom the record shows has a history of medical and psychological issues, and helps supplement her income. In view of the mother's age of more than 86 years, her medical and emotional conditions, and her financial status, we find the record to establish that she would experience extreme hardship due to separation from the Applicant.

We also find the record to establish that the Applicant's mother would experience extreme hardship if she were to relocate to Mexico to reside with the Applicant. The Applicant and his mother state that the mother's grandchildren and their families are in the United States and that she has no ties to

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Mexico. They maintain that the mother is elderly with health issues and doctors in the United States and is in a frail psychological condition. The mother asserts that she is too old to relocate to Mexico where she would have no income because she would no longer receive social security payments and does not qualify for assistance from the Mexican government. She further states that she believes Mexico is dangerous and fears crime in [REDACTED] which the record indicates is the family's home state, and that the Applicant has little savings because he has spent most of his money on his children and her. The Applicant has submitted country information about crime in Mexico, the difficulty in obtaining jobs for those not considered young, and other age discrimination. According to the U.S. Department of State, crime and violence remain serious problems throughout the state of [REDACTED]. See Travel Warning-U.S. Department of State, dated May 5, 2015,

The record reflects that the Applicant's mother was admitted to the United States in 1989 and became a naturalized U.S. citizen in 1996. Given her age and length of residence in the United States, family ties here, and her medical condition, and her concerns for her safety and financial and medical well-being in Mexico, the Applicant has established that his mother would suffer extreme hardship were she to relocate abroad to reside with the Applicant.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen mother 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 record shows that the Applicant was removed from the United States in 1972 and subsequently attempted to reenter the United States by presenting a fraudulent document, as detailed above, and was convicted for illegal entry. The record also reflects that the Applicant has DUI convictions between 1981 and 2006. On appeal the Applicant asserts that his immigration violations occurred as a teenager when he was young and angry with no parental support or guidance. The Applicant acknowledges that he had problems with alcohol, but asserts that he has reformed and repaired relations with his children whom he supports emotionally and financially. The record contains letters from the Applicant's children asserting that they had strained relationships with the Applicant, but that he has changed to be caring and benevolent, that he has grown to be trustworthy, and that they can depend on him for emotional and financial support. The Applicant further contends that he gained accounting skills and has continuously been able to find employment sufficient to support himself and his family. The Applicant asserts that he is reformed and he aides his children and mother emotionally and financially.

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen mother would face if the Applicant were to relocate to Mexico, regardless of whether she accompanied the Applicant or stayed in the United States; the Applicant's family and community ties; his record of employment and payment of taxes since the early 1980s; letters of support from family, employers, and clients; the passage of more than 40 years since his immigration violations; gainful employment in the United States; and his apparent lack of a criminal record since 2006. The unfavorable factors in this matter are the Applicant's illegal entry in 1972, removal from the United States in 1972, his fraud or willful misrepresentation in attempting to procure admission to the United States in 1973, periods of unlawful presence and employment in the United States, and the Applicant's convictions. Although the Applicant's violations are 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.

Cite as *Matter of J-R-A*-, ID# 14290 (AAO Nov. 17, 2015)