



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

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

MATTER OF G-M-J-S-

DATE: NOV. 19, 2015

APPEAL OF HIALEAH FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Nicaragua, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Hialeah, Florida, 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 and previously submitted evidence. The Applicant asserts that he has established extreme hardship to his U.S. citizen spouse. 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.

(b)(6)

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The record establishes that the Applicant failed to disclose his deportation order and criminal convictions (which the record establishes were vacated in [REDACTED] 2000) when he applied for a nonimmigrant visa in 1997, and subsequent admission into the United States, between 1997 and 1999. The Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation. This finding of inadmissibility is not contested on appeal.

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 and U.S. citizen mother are the only qualifying relatives in this case. Hardship to the Applicant, his children, or his mother-in-law 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 asserts that she will experience extreme hardship if she remains in the United States while her spouse relocates abroad as a result of his inadmissibility. The Applicant’s spouse contends that they have been together for over two decades and have raised three children. She maintains that the Applicant emotionally supported her in overcoming psychological trauma and she has increasing anxiety that she will be permanently separated from him. She states that they have family gatherings with their children and grandchildren and worries that separation from the Applicant will be devastating to her children.

The Applicant’s spouse further asserts that she works but still needs the Applicant’s income to cover her household expenses and pay the mortgage. She declares that she works at their family shipping business, but will not be able to operate the business without the Applicant because the license to transport is solely in the Applicant’s name. She maintains that she has always relied upon the Applicant to manage their family responsibilities, finances, and home, and is anxious that her income alone will not be enough to help her mother, who is over 70 years old, and the Applicant’s mother, who is over 90 years old.

The Applicant’s U.S. citizen mother indicates that she has severe arthritis and difficulty walking, and depends emotionally and financially on the Applicant. The Applicant’s spouse’s U.S. citizen mother states that the Applicant has financially supported her, and that he has provided his spouse with critical emotional support. The Applicant’s daughter states that she attends college and her mother’s salary will not cover her tuition, household expenses, and a mortgage.

In support of emotional and financial hardship, the Applicant has submitted a mental health assessment from a licensed psychologist establishing that his spouse is experiencing increased depression and anxiety regarding the Applicant's impending deportation, and that his spouse also suffers from posttraumatic stress disorder due to traumatic events that she experienced in Nicaragua. The evaluator recommends psychotherapy for the Applicant's spouse. The Applicant has also provided evidence establishing that his spouse was granted asylum in the United States from Nicaragua. He further provided a household budget, evidence of his spouse's household expenses, a shipping transportation license, and company income tax records. Based on a totality of the circumstances, the record establishes that the Applicant's spouse will experience extreme hardship if she remains in the United States while the Applicant relocates abroad.

In regard to relocation abroad with the Applicant as a result of his inadmissibility, the Applicant's spouse asserts that she was granted asylum in the United States from Nicaragua and fears she would be in danger if she relocates to Nicaragua. The Applicant's spouse's mother maintains that the Applicant's spouse endured physical and psychological trauma in Nicaragua and it would not be safe for her to relocate with the Applicant. She indicates that her entire family was granted asylum in the United States.

In support of the emotional hardship claim, the mental health assessment states that the Applicant's spouse is fearful to relocate to Nicaragua, and worries that she will lose her family and social support system in the United States, and her family business in the United States, and that she will not be able to build another business in Nicaragua. The Applicant also submitted a U.S. Department of State Human Rights Report demonstrating that Nicaragua continues to have significant human rights abuses.

The record establishes that the Applicant's spouse has been residing in the United States for 30 years and long-term separation from her community and family members, and loss of her family business will cause her significant hardship. Moreover, she would be concerned for her emotional well-being and safety as a result of the trauma she experienced in Nicaragua. Based on a totality of the circumstances, the record establishes that the Applicant's spouse would experience extreme hardship if she relocated with the Applicant to Nicaragua as a result of his inadmissibility.

The Applicant has established that the bar to admission would result in extreme hardship to his qualifying relative 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 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, three children, mother, and mother-in-law would face if the waiver application were denied; the Applicant's over 27 years of marriage; his business and home ownership in the United States; payment of taxes; community ties in the United States; numerous affidavits from friends, family, and relatives attesting to his good character; his remorse for his actions; the passage of more than 18 years since the Applicant's fraud or willful misrepresentation with respect to his nonimmigrant visa application; and his spouse's grant of asylum in the United States. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation, as outlined in detail above, the Applicant's failure to depart pursuant to a voluntary departure order, the Applicant's placement in removal proceedings, and periods of unlawful presence and employment 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 G-M-J-S-*, ID# 14349 (AAO Nov. 19, 2015)