



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

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

MATTER OF S-P-M-

DATE: FEB. 23, 2016

APPEAL OF TUCSON 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 Director, Tucson Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision dated May 1, 2015, the Director found the Applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa and attempting to procure admission through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility to remain in the United States. The Director concluded the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the Applicant asserts she provided sufficient evidence to show that extreme hardship to her spouse would result from her inability to remain in the United States. In support, she offers a brief and additional evidence, including her spouse's and her own updated statements, a psychological report, medical records, financial and country condition information, supportive statements, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

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 contains evidence that the Applicant entered the United States in 2001 using a B2 visa and began residing here. When she later applied for a new B1/B2 Border Crossing Card (BCC), the Applicant claimed to reside in Mexico by listing a Mexican address on her visa application and was issued a BCC in January 2002. The Applicant admits falsely claiming Mexican residency to hide the fact she was living illegally in the United States and does not dispute that she is inadmissible under section 212(a)(6)(C) of the Act for fraud and misrepresentation.

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Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), provides that section 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

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 . . . that the refusal of admission . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien, or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's spouse. Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The Applicant claims to have established that a qualifying relative would suffer extreme hardship by relocating and the evidence shows that the cumulative effect of problems impacting her spouse represents hardship that rises to the level of "extreme." The record shows that her 33-year-old spouse entered the United States in 1998, has lived here more than half his life, and is well-established in his community, as well as that his father and four siblings are lawful permanent residents. Further, he claims that fear for his family's safety should they return to Mexico has caused him to suffer panic attacks with associated symptoms including insomnia, lethargy, and chest pains. A travel warning issued by the U.S. Department of State substantiates his concerns about violent crime in his native [REDACTED] state, where he, his wife, and their two children, ages six and thirteen, would live. The travel warning advises U.S. citizens about the risks of travel throughout [REDACTED], "a key region in the

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international drug and human trafficking trades,” and states they should limit travel to daylight hours. The record contains a statement by a former U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent with experience in the northern Mexican states confirming that the [REDACTED] based to the south of [REDACTED] exerts strong influence in northeast [REDACTED] where the Applicant and her spouse’s hometowns are located. *See Statement of [REDACTED]* June 11, 2015. The Applicant’s spouse states that the ground route between [REDACTED] and his hometown has become so dangerous as to make him fearful of driving between the two cities or moving his family there, and country condition information states that kidnapping and extortion have risen in parts of the country and that eastern and northern [REDACTED] are subject to cartel violence. *See U.S. Department of State, Country Information—Mexico*, February 6, 2015.

A psychologist’s report dated May 23, 2015, diagnosing the Applicant’s spouse with severe depression and anxiety supports claims of distress about his wife’s immigration problems and the prospects of moving to Mexico. Noting that the qualifying relative’s scores on several objective tests place him in the problem risk range for depression, as well as for suicide, the psychologist diagnoses him with Depressive and Generalized Anxiety Disorders and recommends he be referred for psychological services. The psychologist concludes that living in Mexico will continue to cause the Applicant’s spouse extreme stress due to fear of violence to himself, as well as fear of danger to his family, thus causing him to become more depressed. The Applicant’s spouse asserts that moving would expose his family to the threat of violence, require him to leave his job, and remove access to necessary mental health care for himself and prescribed medical care for his [REDACTED]-year-old son. The travel warning substantiates his concerns about personal security. In addition, whereas documentation establishes that the Applicant’s son has suffered frequent ear infections, experienced associated hearing loss, and been under the regular care of a specialist, country condition information confirms that access to medical care in rural Mexico is limited. The psychologist notes that the qualifying relative’s concern for his son’s health condition would represent another stressor, as would concerns about the lack of educational opportunities both for this child and for his younger sister.

The Applicant also asserts her spouse will experience hardship due to their separation, and there is evidence that his emotional difficulties resulting from the Applicant’s departure will exceed the typical consequences of inadmissibility of a family member. A psychological evaluation states that the emotional distress he is experiencing due to his wife’s impending absence will worsen when she leaves due to concern about safety threats, adverse health consequences, and poverty. The record also supports the Applicant’s claims that her absence will cause economic hardship to her spouse. Documentation establishes that he is the sole wage earner for the household, but that his yearly income falls at or just above the 2014 federal poverty guideline of \$23,550 for a family of four.¹ Evidence of family expenses that equal or exceed income supports the qualifying relative’s claim

¹ The comparable 2015 threshold rose to \$24,250. *See Annual Update of the HHS Poverty Guidelines*, 79 Fed. Reg. 3593, 3594 (January 22, 2014) and 80 Fed. Reg. 3236, 3237 (January 22, 2015). For 2014, he and the Applicant jointly reported about \$21,400 adjusted gross income (AGI). Documentation shows AGI of slightly less than \$10,000 and \$15,600 for 2013 and 2012, respectively, and W-2s show the he is solely responsible for these earnings.

that he will have difficulty paying for childcare while he is at work. Documentation of fixed expenses, including a mortgage on the family residence, utilities, and other necessities such as healthcare, supports the assertion that he will be unable to help maintain a separate household for his spouse in Mexico. The Applicant asserts that her opportunities to work and contribute toward living expenses are limited by the scarcity of paid employment in her rural, agrarian community, and by control of available jobs by drug cartels. The evidence shows that, without the Applicant, her spouse will have difficulty meeting his financial obligations, including the mortgage on their home.

For all these reasons, the cumulative effect of the medical, emotional, and financial hardships the Applicant's spouse will continue to experience due to the Applicant's inadmissibility rises to the level of extreme. We conclude based on the evidence provided that, were the waiver application denied, the Applicant's spouse would suffer hardship beyond those problems normally associated with inadmissibility or removal of a family member.

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (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 (citations omitted). In evaluating whether to favorably exercise 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, recency 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).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The favorable factors in this matter are the extreme hardships the Applicant's U.S. citizen spouse will face if the Applicant were to reside in Mexico, regardless of whether he accompanied her or remained in the United States; the Applicant's lack of any criminal record; support letters evidencing good character and ties to the community; the passage of nearly 15 years since the Applicant's misrepresentations; and residence here since the age of 19. The unfavorable factors in this matter are the Applicant's misrepresentations.

Although the Applicant's immigration 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.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of S-P-M-*, ID# 15503 (AAO Feb. 23, 2016)