



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

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

MATTER OF A-G-P-L-

DATE: JAN. 6, 2016

**MOTION ON ADMINISTRATIVE APPEALS 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(a)(9)(B)(v) and 212(i), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 8 U.S.C. § 1182(i). The Field Office Director, Chula Vista, California, denied the application. We dismissed an appeal of the Director's decision. The matter is now before us on a motion to reopen. The motion to reopen will be granted and the appeal will be sustained.

The Applicant was found 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 attempting to procure an immigration benefit under the Act through fraud or misrepresentation. In addition, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse and children.

In a decision dated July 8, 2013, the Director concluded that the Applicant did not establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

In a February 2, 2015, decision on appeal, we concurred with the Director that the Applicant did not demonstrate that extreme hardship would be imposed on a qualifying relative and, consequently, dismissed the appeal.

On motion, the Applicant asserts that her qualifying relative would experience extreme hardship if the waiver application is not approved and submits additional evidence of hardship to her spouse.

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.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

(i) In General

Any alien (other than an alien lawfully admitted for permanent residence) who—

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the Applicant was denied admission to the United States on April 24, 1990 after attempting to enter through fraud or misrepresentation. In addition, the Director determined that the Applicant accumulated more than one year of unlawful presence in the United States prior to her last entry on December 30, 2010, based upon evidence that she had been residing in the United States since December 2000. The Director further determined that she obtained a Border Crossing Card and procured admission to the United States as a B2 visitor through misrepresentation of a material fact by failing to disclose that she was residing in the United States. The applicant does not contest these findings of inadmissibility.

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 . . . .

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

an immigrant who is the spouse or 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 to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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).

We further note that this matter arises within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The Applicant previously submitted evidence to show that her spouse, whom she married in 1987, suffers from medical conditions which cause hardship to him, including evidence that her spouse suffers from frequent ankle and back pain resulting from an accident some years ago. The Applicant's spouse states that due to the accident, he had to have screws placed in his ankle, and he has constant back pain. Medical documentation in the record indicates that the Applicant's spouse was treated for an ankle injury that occurred in September 2000. Additional medical evidence in the record indicates that the Applicant's spouse underwent magnetic resonance imaging in June 2011, which showed disc protrusion and facet degenerative changes. On motion, the Applicant submits a statement from a doctor that her spouse has further medical hardship in that he had an abnormal EKG, and that he is suffering from increasing blood pressure due to the Applicant's possible

removal from the United States. The doctor indicates that the symptoms for the Applicant's spouse are getting worse. These medical conditions, considered together, establish that the Applicant's spouse will suffer medical hardship if the waiver application is not approved.

The Applicant also previously established her spouse suffers from depression and anxiety, as the record includes a psychological evaluation for the Applicant's spouse, with the diagnosis that he has generalized anxiety disorder, severe, without psychotic features, and dysthymic (depressive) disorder, moderate, without psychotic features. The psychologist's report states that he has been in contact with a former therapist of the applicant's spouse, and recommended that the applicant's spouse continue to participate in individual counseling sessions to attain emotional stability and to help him cope with stress. On motion, the Applicant submits a doctor's statement which indicates that the Applicant's spouse is experiencing severe stress, anxiety, and depression, and that his symptoms are getting worse.

Additional financial documentation submitted on motion includes a copy of the 2014 federal income tax return, which indicates that the Applicant's spouse had an adjusted gross income of \$51,831. The Applicant states that her spouse would experience financial hardship if the waiver application is not approved as he is currently supporting their daughter, who is in college, and the additional burden of providing for two households would cause hardship.

The Applicant states that their children would suffer extreme hardship if the waiver application is not approved, and she acknowledges that the children are no longer minors. As stated above, under sections 212(i) and 212(a)(9)(B)(v) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered as a factor to the extent that it results in hardship to a qualifying relative. As noted above, this matter falls within the jurisdiction of the Ninth Circuit, and following that Court's decision in *Salcido-Salcido*, *supra*, due deference is given to hardships associated with separation from family members.

The record establishes that if the waiver application were denied, the Applicant's spouse would experience medical and emotional hardship as a result being separated from the Applicant, to whom he has been married for over 25 years, and, in addition, would suffer hardship associated with financial difficulties as well as the hardships associated with the separation of the family. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the Applicant.

The Applicant further asserts that her spouse will suffer hardship if he were to relocate to Mexico with her. The Applicant contends that her husband will have difficulty obtaining suitable medical treatment for his conditions in Mexico due to the lack health insurance, and also due to Mexico's lack of medical advancements and programs. In support of this contention, the Applicant submits a copy of a report from the Library of Congress for the U.S. Department of Justice regarding the legal aspects of the availability and cost of health care in Mexico.

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In addition, the Applicant contends that, although her spouse was born in Mexico, it would be difficult for him to assimilate back into the Mexican culture after residing in the United States since 1990 and that it is dangerous in Mexico due to drugs, gangs, criminals, and corruption. The Applicant submits country conditions information in support of this contention. In addition, on May 5, 2015, the U.S. Department of State issued a travel warning for Mexico. The Applicant's spouse is from the state of Sinaloa. The State Department travel warning, in regard to travel to Sinaloa, states:

Defer non-essential travel to the state of Sinaloa except the city of [REDACTED] where you should exercise caution, particularly late at night and in the early morning. One of Mexico's most powerful criminal organizations is based in the state of Sinaloa, and violent crime rates remain high in many parts of the state. Travel off the toll roads in remote areas of Sinaloa is especially dangerous and should be avoided. We recommend that any travel in [REDACTED] be limited to [REDACTED] and the historic town center, as well as direct routes to/from these locations and the airport.

Based on the evidence in the record, the Applicant has established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the Applicant.

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

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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 include:

- The Applicant’s family members residing in the United States, her U.S. citizen spouse and her two U.S. citizen children
- The extreme hardships that the Applicant’s spouse will endure in the Applicant’s absence
- Separation from the Applicant’s children, one of whom is currently studying in college and the other serving the United States in the [REDACTED]
- The approved immigrant visa petition filed on the Applicant’s behalf
- The Applicant’s long residence in the United States
- The apparent lack of a criminal record since 1996, when the Applicant was convicted of a misdemeanor burglary offense and sentenced to 3 days in jail
- Evidence of the Applicant’s volunteer work in the community

The unfavorable factors in this matter include:

- The Applicant’s unlawful presence in the United States
- The Applicant’s misrepresentation to U.S. immigration officials
- The Applicant’s 1996 misdemeanor burglary conviction

In this particular case, the Applicant has established positive factors to be considered, including her position as a wife and mother and the hardship to her spouse and children if the waiver application is not approved. It is apparent that the Applicant has played an important role in her family, raising a daughter who is furthering her education and son who is serving in the U.S. military. In addition, we recognize the volunteer activities of the Applicant. As such, we find the Applicant has demonstrated that she has worked to overcome the negative factors in his case. Therefore, we further find 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 grant the motion to reopen and sustain the appeal.

**ORDER:** The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of A-G-P-L-*, ID# 13165 (AAO Jan. 6, 2016)