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

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

MATTER OF A-D-H-

DATE: JAN. 27, 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(i), 8 U.S.C. § 1182(i). The Field Office Director, Harlingen, Texas, denied the application, and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion to reopen will be granted, and the appeal will be sustained.

In a decision issued on December 10, 2013, the Director found the Applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for attempting to procure entry into the United States by fraud or willful misrepresentation. Concluding that the Applicant had not established that failure to receive a waiver would impose extreme hardship on a qualifying relative, the Director, accordingly, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, we determined that extreme hardship to a qualifying relative had not been established and dismissed the appeal accordingly.

On December 19, 2014, the Applicant filed a motion to reopen and a motion to reconsider, which were received by this office on August 11, 2015. In support of the instant motions, the Applicant submits a brief, affidavits from herself and her spouse, biographic documents for the Applicant's child, financial and business records, photographs, and medical documentation. The entire record was reviewed and considered in rendering this decision.

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.

With respect to the Director's finding of inadmissibility, the record reflects that the Applicant presented a Border Crossing Card (BCC) when seeking admission to the United States at [REDACTED] Texas on [REDACTED], 2006. Upon further questioning by a U.S. Customs and Border Patrol officer, the Applicant admitted that she was residing and working in the United States without authorization. The Applicant was subsequently removed. The Applicant was thus found inadmissible under section

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212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation when she attempted to enter the United States on [REDACTED], 2006. The Applicant does not contest this finding of inadmissibility on motion. Rather, she seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse and daughter.

Section 212(i) of the Act provides:

- (1) 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 immigrant 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 Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the only qualifying relative is the Applicant's U.S. citizen 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).

On appeal, we determined that the Applicant had not established that her U.S. citizen spouse would experience extreme hardship were he to remain in the United States while the Applicant relocated abroad due to her inadmissibility. Specifically, we determined that the submitted documentation did not establish the severity or effects of the emotional or financial hardship he would suffer were he to

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be separated from the Applicant. In sum, we concluded that the record did not establish that the hardship imposed on the Applicant's spouse would exceed the hardships normally experienced if he were to remain in the United States while the Applicant resides abroad.

On motion, the Applicant addresses the issues raised by this office when we dismissed the appeal. The Applicant submits documentation from a psychiatrist indicating that her spouse has been diagnosed with general anxiety and has been prescribed antidepressant and anti-anxiety medications. In a statement submitted on motion, the Applicant's spouse describes suffering anger, paranoia, depression, and sleeplessness related, in part, to his fears regarding the possible separation from his wife. He indicates that his U.S. citizen child, born in [REDACTED], would accompany his wife if she resides abroad, and that he fears for their safety due to the prevalent violent crime in Mexico. The Applicant's spouse also describes worries with respect to his financial situation, as he has expenses related to his business and the family's home, as well as debt related to the Applicant's pregnancy and delivery.

On motion, the Applicant submits financial records of her spouse's business and household expenses, as well as her own statement reiterating her spouse's anxieties, her family's current financial struggles, and the increased hardship her spouse would suffer in order to support two households. The record establishes that the Applicant's spouse is self-employed, and that his business income was \$10,655.00 in 2011, the most recent year for which records were provided. We also note that the U.S. Department of State advises U.S. citizens to defer non-essential travel to [REDACTED] the Applicant's home state in Mexico, due to the significant safety risks posed by violent crime, including homicide, kidnapping, extortion, and sexual assault. The Department of State also notes that law enforcement capacity is limited to nonexistent, there are no safe highways, and curfews have been imposed. Based on a totality of the circumstances, we find that the Applicant has established that her spouse would experience extreme hardship were he to remain in the United States while the Applicant resides abroad due to her inadmissibility.

With respect to relocating abroad to reside with the Applicant as a result of her inadmissibility, we determined on appeal that the Applicant had not established extreme hardship insofar as her spouse resided there as a student between 2006 and 2012, had retained familiarity with the language and customs of Mexico, and did not indicate having safety concerns in Mexico while he lived there.

On motion, the Applicant submits the documentation previously noted. The record reflects that the Applicant's U.S. citizen spouse moved to the United States at a young age and has been a citizen for over 15 years. He has operated a business in the United States since 2012 and owns two properties in the United States, including the family home. Were the Applicant's spouse to relocate to Mexico to reside with the Applicant, he would leave behind his parents, his siblings, his gainful employment, his business and home, and his community ties, thereby causing him hardship. The medical documentation previously discussed documents the Applicant's current anxieties with respect to his family and finances and the risk of violent crime in Mexico. Moreover, we note the warnings issued by the U.S. Department of State, as detailed above. The Applicant has thus established on motion

that her spouse would suffer extreme hardship were he to relocate abroad to reside with the Applicant due to her inadmissibility.

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 hardship the Applicant’s U.S. citizen spouse would face if the Applicant were to relocate to Mexico, regardless of whether he accompanied the Applicant or stayed in the United States; the Applicant’s community ties; the Applicant’s U.S. citizen child and the extreme hardship she would face if she accompanied the Applicant abroad; and the Applicant’s apparent lack of a criminal record. The unfavorable factors in this matter are the Applicant’s attempt to procure entry to the United States by fraud or willful misrepresentation, her removal in 2006, and the Applicant’s periods of unlawful status in the United States. 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.

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

Cite as *Matter of A-D-H-*, ID# 15363 (AAO Jan. 27, 2016)