



U.S. Citizenship
and Immigration
Services

(b)(6)



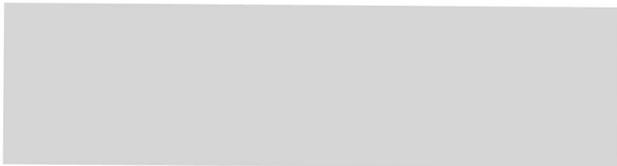
DATE: APR 29 2015 OFFICE: SAN FRANCISCO, CA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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. She also 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 procuring admission to the United States through willful misrepresentation of a material fact. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated July 10, 2014.

On appeal, the applicant, through counsel, asserts that U.S. Citizenship and Immigration Services (USCIS) erroneously denied the waiver application by misapplying the law, failing to analyze the most current evidence and by misinterpreting medical evidence. *See Form I-290B, Notice of Appeal or Motion*, dated August 3, 2014.

The record contains, but is not limited to: briefs written on behalf of the applicant; declarations from the applicant and her qualifying spouse, as well as from a friend and two family members with their accompanying identifications; a letter from the applicant's church; identification documents for the applicant, her qualifying spouse and their children; psychological evaluations for the qualifying spouse and two of the children; medical documentation for the qualifying spouse and two of the children; proof of medical insurance for the qualifying spouse and the children; academic documentation for three of the children; financial documentation; photographs; and country-conditions materials regarding Mexico. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(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.

....

- (v) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of 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 record indicates that the applicant first entered the United States in 1992 without inspection, and departed in 2000. The record shows she next entered the United States in August 2000 with a visa, and left the United States in June 2006. She therefore accrued unlawful presence from April 1, 1997, when unlawful presence provisions became effective, until her departure in 2000, a period in excess of one year. She also accrued unlawful presence between 2000 and her departure in 2006, a period in excess of one year. The applicant returned to the United States in September 2006, and the record does not show that she has since departed. In applying for adjustment of status, the applicant is seeking admission within ten years of her last departure from the United States.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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 indicates that the applicant provided false information in order to obtain a visa issued to her on August 16, 2000. Specifically, the applicant stated on a visa application that she was single, though she was married with her spouse residing in the United States. Accordingly, the applicant procured admission to the United States through the willful misrepresentation of a material fact.

As a result of the applicant's unlawful presence and willful misrepresentation, she is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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 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. See *Salcido-Salcido*, 138 F.3d at 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.

With regard to the hardship her qualifying spouse would experience upon separation, he asserts that he will experience emotional and financial hardships if the applicant returns to Mexico due to her inadmissibility. Two mental health evaluations, each signed by two social workers, confirm that the qualifying spouse suffered from emotional and physical abuse and neglect, as a child growing up in Mexico. The social workers indicate that the qualifying spouse was raised by his mother and a stepfather who showed him indifference and favored his biological children, and never met his own biological father. According to the social workers, as a result of the qualifying spouse's relationship with his stepfather, the qualifying spouse encountered low self-worth, feelings of rejection, anxiety, sleeplessness and other trauma-based symptoms. The mental health evaluations also state that the qualifying spouse lived in significant poverty in Mexico, often going without bare necessities. The qualifying spouse states that he wanted to go to medical school, and joined the military with the understanding that they would pay for his education, which did not occur. The qualifying spouse eventually left Mexico to make a better life in the United States. The social workers state that, due to the extent that the qualifying spouse has suffered throughout key developmental phases in his life, the qualifying spouse is susceptible to renewed anxieties and the applicant has been emotionally stabilizing for him. The most recent evaluation states that, in the absence of the applicant, her spouse is at risk of reverting to previous levels of dysfunction or even deeper struggle. As a result of the applicant's immigration issues, the qualifying spouse is experiencing anxiety, sleeplessness, exhaustion, forgetfulness and the inability to focus. In addition, the social workers indicate that the applicant's spouse is having a difficult time concentrating at work and loses track of what he is doing. The applicant's spouse was diagnosed with Post Traumatic Stress Disorder and major depression.

With regard to the financial hardships that the qualifying spouse will suffer upon separation, the record includes financial documentation, such as tax returns, bank statements, letters from employers, pay stubs and proof of their expenses, such as their mortgage, utility and medical bills. The qualifying spouse asserts that he would not be able to afford to send money to his wife in Mexico or childcare for his two minor children in the United States, if his wife had to return to Mexico. He also states that, without the applicant's income, their financial stability will crumble

and indicates that they have already lost a rental property and a small business, which was confirmed by the record. It appears that, given the applicant's spouse's income as shown in tax documents and bank statements, the applicant's spouse would suffer financial hardship by losing the applicant's income and having to provide for her in Mexico. The record contains a spreadsheet of the applicant's and qualifying spouse's financial situation, many details of which were supported by additional documents, demonstrating that they are having difficulty covering their expenses even with the applicant contributing financially. Considering the evidence in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of his separation from the applicant.

With respect to the potential hardship that the qualifying spouse could encounter upon relocation to Mexico, the qualifying spouse states that he has no family in Mexico, as his mother and stepfather passed and all his siblings live in the United States. He further explains that, although his mother-in-law and three of the applicant's siblings are in Mexico, they do not have any room in their home and he and the applicant currently help support those relatives. In addition, the qualifying spouse indicates that it would be difficult for him to obtain a decent paying job at his age, and that he will be unable to help his son pay for college if he loses his job in the United States. He indicates that his son wants to go to medical school, as he wanted when he was young, and he wants to help his son and his other children attain their dreams. The qualifying spouse also asserts that it would be "unbearable" for him to watch his children be unable to pursue their dreams, like himself. The record contains a letter from the qualifying spouse's employer indicating that he holds long-term employment in the United States, having worked for the same employer since January 2000. The qualifying spouse also indicates that he will be unable to afford medical care for himself and his family in Mexico. The record contains proof of the qualifying spouse and children's health coverage in the United States. The record also confirms through medical records and doctors' letters that the applicant and qualifying spouse's daughter has had several medical issues, including severe vision problems, requiring regular office visits. She has also had surgeries for her eye and, as a result, the applicant and qualifying spouse have incurred significant medical bills, even after their health insurance paid its portion.

In addition, the most recent mental health evaluation of the qualifying spouse indicates that if he returned to Mexico, after twenty years of being in the United States, his long-term emotional disturbances through re-immersion into that environment could trigger his old pain and heighten his suffering and put him at risk for long-lasting trauma-based symptoms. The qualifying spouse also fears for the safety and health of himself and his family and his ability to secure employment, should he return to Mexico. The record contains general country condition materials documenting age discrimination, health care concerns and safety-related issues in Mexico. Considering the evidence in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of relocating to Mexico with the applicant.

Corroborative evidence in record confirms that the applicant is working and that the applicant and qualifying spouse combine their income, and that the qualifying spouse relies on the applicant's income. These financial concerns combined with the emotional and psychological issues that the qualifying spouse would experience due to his separation from the applicant, considered in their cumulative effect, constitute hardship beyond the common results of removal. We conclude that the

applicant's qualifying spouse would also suffer extreme hardship if he relocated to Mexico to be with the applicant based upon his having to leave his long-term employment in the United States, his loss of health benefits that his family requires, his psychological issues resurfacing from his childhood, his safety concerns and his lack of family ties to Mexico. When evidence of this hardship is considered in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of separation from the applicant and relocation to Mexico.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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 an 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 the alien began his 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 and service to 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.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether he accompanied the applicant or remained in the United States; her ties to the United States, including to her U.S. citizen children; her payment of taxes; evidence of her volunteer work; and her letters of support from friends and

(b)(6)

NON-PRECEDENT DECISION

Page 8

family. The unfavorable factors in this matter are the applicant's misrepresentation and unlawful presence 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. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B) and 212(i)

ORDER: The appeal is sustained.