



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: AUG 31 2015

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion to reopen will be granted and the waiver application will be approved.

The applicant is a native and citizen of El Salvador 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 and again seeking admission within ten years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and family.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 10, 2009. On appeal, we concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated April 25, 2012.

On motion, the applicant's spouse asserts that he will suffer psychological, emotional, physical and financial hardships if the applicant's waiver is not granted. New evidence was also provided on motion to supplement the record.

The record contains letters from the qualifying spouse, a marriage certificate, birth certificates, general information regarding depression, a Department of State Country Specific Information report on El Salvador, medical records regarding the qualifying spouse, financial documentation and documentation submitted with the Application to Register Permanent Residence or Adjust Status (Form I-485). In support of the instant motion, the applicant submits a letter from her spouse detailing his hardships, financial and medical documentation, a psychological report and their marriage certificate. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). New evidence was provided on appeal to address some of the deficiencies in the original appeal, including, but not limited to, the psychological hardships of the applicant's spouse. We will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

Section 212(a)(9) 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.

The record indicates that the applicant was ordered deported on December 15, 1994 and that she departed voluntarily on September 10, 2006. As such, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, until April 16, 2003, one day prior to her approval of Temporary Protected Status, a period in excess of one year. The applicant is seeking admission within ten years of her departure from the United States. Therefore, as a result of the applicant's unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not dispute her inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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.

A waiver of inadmissibility under section 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. The applicant's husband 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.

In our April 25, 2012 decision, we previously found that, when considered in the aggregate, the evidence of record established that the applicant's spouse would experience extreme hardship if he were to relocate to El Salvador. The record establishes that the applicant's U.S. citizen spouse has

resided in the United States for over twenty years and has two sons and a mother that live in the United States. The applicant's asserts that his mother, who has been diagnosed with diabetes and receiving treatment, is dependent on him for transportation, translation, finances and other basic needs. Further, the record reflects that that it would be financially difficult for the applicant's spouse to relocate to El Salvador and he indicates that he would have to leave behind a job that he loves. The applicant's spouse also indicates that he would face emotional hardships by returning to his home country which he fled due to living condition and safety issues. We noted in our prior decision that conditions in El Salvador have resulted in the extension of Temporary Protected Status (TPS) for nationals of El Salvador through September 9, 2013, which has been extended again to September 9, 2016. Further, the most recent Department of State travel warning, dated June 22, 2015, continues to warn travelers that "crime and violence are serious problems throughout the country." As such, the cumulative effect of the hardships to the qualifying spouse, in light of his family ties to the United States, his length of residence in the United States, his financial situation and country conditions in El Salvador, rises to the level of extreme. As such, it has been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to his inadmissibility.

We also concluded previously, however, that the applicant failed to establish that the qualifying spouse would suffer extreme hardship as a consequence of being separated from her. Specifically, the applicant failed to provide sufficient evidence on appeal to illustrate how the qualifying spouse's psychological and emotional hardships upon separation are outside the ordinary consequences of removal. In the instant motion, the applicant provides an additional letter and a psychological report detailing the emotional and psychological hardships that he is experiencing and would experience upon separation. The psychological report confirms that he is suffering from Major Depressive Disorder and Anxiety Disorder, as well as indicating that the qualifying spouse has a history of depression, anxiety and abandonment issues related to growing up without a father. As a result, the psychological report states that the qualifying spouse is worried about the well-being of his children without the applicant and that he also fears not being able to give his children the attention they need from him because of his lack of energy and his own feelings of hopelessness, should they be separated from the applicant. The qualifying spouse indicates that he and the applicant have also been married for over twenty years, and that they have dated for almost thirty years. He expresses in his letter that he is devastated and distraught with the idea of not living with his wife and indicates that he is dependent upon her in many ways including, but not limited to, emotional and physical dependence, as well as performing his insulin injections, raising their children, taking care of their finances and helping to take care of his legal permanent resident mother. The applicant's spouse also describes how close he is with his wife and children and how they are together constantly. In addition, the applicant's spouse indicates that he would face financial hardships upon separation because he would not be able to afford the costs of visiting the applicant and would be unable to maintain two households. The record supports these assertions through tax documents and paystubs for the qualifying spouse, indicating his annual salary is approximately \$27,000, and through documentation of some of his expenses. After consideration of the additional evidence provided on motion, we find that the record contains sufficient evidence to demonstrate that the applicant's spouse will experience extreme hardship upon separation from the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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-Moralez*, 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 he 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 and children would face if the applicant is not granted this waiver, regardless of whether they accompanied the applicant or remained in the United States, her lack of a criminal record, and her care for the qualifying spouse, his parent and their children. The unfavorable factor is her unlawful presence in the United States.

Although the applicant's immigration violation is serious and cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver

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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.

ORDER: The motion will be granted, the previous decision withdrawn and the waiver application approved.