



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

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

MATTER OF M-A-B-R-

DATE: DEC. 11, 2015

APPEAL OF NEBRASKA SERVICE CENTER 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), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The record reflects that the Applicant 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 seeking admission within ten years of his last departure from the United States. The record indicates that the Applicant is married to a U.S. citizen and is the father of three U.S. citizen children. He is the beneficiary of an approved Form I-130, Petition for Alien Relative. The Applicant seeks a waiver of inadmissibility pursuant to 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 his U.S. citizen spouse and children and lawful permanent resident mother.

In a November 3, 2014, decision, the Director concluded that while the Applicant established that extreme hardship would be imposed on a qualifying relative, the Applicant did not demonstrate that the waiver should be granted as a matter of discretion, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant notes that the Director's decision to deny the Form I-601 was based in part on allegations that the he was untruthful to the immigration court, immigration officers, and that he denied certain events of his past, and states that his appeal is an attempt to rectify discrepancies in his case.

The record includes, but is not limited to, the following documentation: statements by the Applicant, the Applicant's spouse, and other family members; financial documentation; an assessment of the overall well-being of the Applicant's family by a licensed clinical social worker; medical and educational documentation for the Applicant's children; letters of reference; and the Applicant's criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 entered the United States without inspection on or before 1994 and remained in the United States until his voluntary departure in 2013. Therefore, the Applicant was unlawfully present in the United States for a period of more than one year, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The Applicant does not contest this inadmissibility.

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

(v) Waiver.-The Attorney General [now Secretary 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 to the satisfaction of the [Secretary] 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relatives in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and we 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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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.

As noted above, the Director determined that the Applicant established that his qualifying relative would suffer extreme hardship if the waiver application is not granted. We affirm that the record supports this determination.

The Applicant contends that his spouse is suffering from financial hardship as she is unable to support herself and their three children in his absence. The record contains financial documentation, including a copy of the 2013 federal income tax return for the Applicant's spouse, showing an adjusted gross income of \$14,363. The assessment of the overall well-being of the Applicant's family by a licensed clinical social worker states that the Applicant's spouse has been working two jobs to make enough money to cover their bills, and the record also contains evidence that the Applicant's spouse is having difficulty paying for the family's home. The record further indicates that the Applicant's spouse was attending nursing school, but was unable to continue her education following the Applicant's departure to Mexico. The Applicant's spouse also states that her children are experiencing both medical and educational difficulties in the absence of their father, and her concern for her children is resulting in hardship for her. Medical and educational records are submitted in support. In a 2014 letter, an assistant principal indicates that all of the children's grades have fallen since the Applicant left, and that they struggle with attendance and behavior issues. In light of the evidence of record, we affirm that the cumulative effect of the financial and emotional hardship to the Applicant's spouse is experiencing due to the Applicant's inadmissibility, and the concern she has for their three children, rises to the level of extreme.

Concerning the hardship that the Applicant's spouse may experience if she relocates to Mexico to be with the Applicant, the record reflects that the Applicant's spouse was born in the United States and has always resided in the United States. According to the assessment of the overall well-being of the Applicant's family by the licensed clinical social worker, the children of the Applicant do not speak Spanish, and would have a difficult time adjusting to school and the culture in Mexico. Based this and other evidence of record, the Applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with the Applicant.

As such, we concur with the Director, and find that the situation presented in this application rises to the level of extreme hardship. We now turn to a consideration of 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 Applicant filed Form I-601 on April 18, 2014. On June 30, 2014, the Director issued a request for evidence which included a request that the Applicant provide details regarding his arrest record, and information regarding his unlawful entry into the United States. In the Applicant's response, dated September 9, 2014, the Applicant included a statement that he entered the United States in 1992, not 1994, and stated that he was arrested for driving while intoxicated in 2000 and 2006, but not in 2002. In the response, the Applicant also indicated that regarding his arrests in California in 1993, 1994, and in 2009, he pled guilty to one count of driving under the influence (DUI) of alcohol or drugs, and four other counts were dismissed, including an additional charge of DUI, one count of possession of a controlled substance, one count of obstructing/resisting a public officer, and one count of driving with a suspended/revoked license.

Following the Applicant's response, on November 3, 2014, the Director denied the Form I-601 as a matter of discretion. The Director stated that the Applicant has a history of reporting incorrect information to law enforcement and immigration authorities. The Director further noted that the evidence does not establish that the Applicant is inadmissible to the United States due to his criminal record, but he was asked to provide information regarding the details of his arrests for the purpose of establishing good moral character, and the Applicant did not provide such information in his response to the June 30, 2014, request for evidence. The Director therefore found that the unfavorable factors in the Applicant's case outweigh the favorable factors, and denied the waiver as a matter of discretion.

On appeal, with respect to the correct date that the Applicant entered the United States, the Applicant notes that it is undisputed that he entered the United States on only one occasion. The Applicant states the correct date that he entered the United States is 1992, and that the reason for the differing information regarding the dates of entry on his applications is the result of misrepresentations by his

former attorney. In the brief submitted through counsel on appeal, the Applicant admits to an error on his date of entry on the Form I-130 filed by his spouse on August 15, 2011, which indicates that he entered the United States in 1994; however, the Applicant, in the brief, indicates that the incorrect information that he entered the United States in 1982 or in 1986 is solely the responsibility of his former attorney who gave the false information to the Immigration Court, and that his discovery of the false information was not until much later when the problem could not be corrected.

With respect to the arrest record of the Applicant, the Applicant states in his brief on appeal that the offenses in 1993 and 1994 took place more than 20 years prior to the filing of his application while he was still a young adult. In his statement submitted with the appeal, the Applicant admits that he was irresponsible when he first came to the United States, and he did hang around with the wrong crowd of people and did get into some trouble in California. In *Matter of Arreguin*, the Board stated that it was “hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.” 21 I&N Dec. 38, 42 (BIA 1995). As a result, the Board did consider the arrest report but gave it “little weight.” *Id.* In *Avila-Ramirez v. Holder*, the Seventh Circuit Court of Appeals found that the Board erred in giving an arrest report “significant weight” but clarified, “this is not to say that we read *Arreguin* to prohibit any consideration of arrest reports in the weighing of discretionary factors.” 764 F.3d 717, 725 (7th Cir. 2014) (citing *Arreguin*, 21 I&N Dec. at 42, and *Sorcía v. Holder*, 643 F.3d 117, 126 (4th Cir. 2011) (stating that *Arreguin* “did not indicate that it was *per se* improper to consider an arrest report ....”). Therefore, although we do not give substantial weight to arrest reports that did not lead to conviction, we do consider them in our discretionary determination.

The favorable factors in this matter include:

- The Applicant’s family members residing in the United States, his U.S. citizen spouse and his three U.S. citizen children.
- The extreme hardships that the Applicant’s spouse will endure in the Applicant’s absence.
- Evidence of hardship to the Applicant’s children.
- The Applicant’s willingness to return to California in 2009 to resolve outstanding arrest warrants in that State.
- The approved immigrant visa petition filed on the Applicant’s behalf.
- Letters of reference on the Applicant’s behalf.

The unfavorable factors in this matter include:

- The Applicant’s 15 year absence on a warrant for his arrest in California.
- The Applicant’s original unlawful entry into the United States.
- The Applicant’s unauthorized employment in the United States.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the Applicant to establish he is eligible for the benefit sought. In this particular case, the Applicant has established positive factors to be considered, including letters of reference attesting to his good character, and

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his position as a husband and father, a favorable position that would cause hardship to his spouse and children if the waiver application is not approved. We recognize that the Applicant has had several arrests, but many of those arrests occurred several years ago, and as discussed above, absent convictions for the arrests, diminished weight as a negative factor is assigned. We further note that the Applicant took steps to resolve his criminal matters, and to later provide accurate information to immigration officials. As such, we find the Applicant has demonstrated that he 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.

**ORDER:** The appeal is sustained.

Cite as *Matter of M-A-B-R-*, ID# 12796 (AAO Dec. 11, 2015)