



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

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

MATTER OF J-A-S-G-

DATE: DEC. 14, 2015

APPEAL OF FRESNO FIELD 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) and § 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The Field Office Director, Fresno Field Office, denied the application. The matter is now before us on appeal. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The Applicant was also 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 is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility to remain in the United States with his U.S. citizen spouse.

In a decision dated March 4, 2015, the Director found that the Applicant had not established that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The waiver application was denied accordingly.

On appeal the Applicant asserts that his spouse will suffer economically and emotionally without him. With the appeal the Applicant submits statements from his spouse and him, financial documentation, medical information for his spouse, a psychological evaluation of the spouse, a letter from the Applicant's employer, letters of support from the Applicant's children, and country information for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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(i) of the Act provides that:

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 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year...and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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) Waiver. - The Attorney General [now the 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 Attorney General (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...

The record reflects that the Applicant misrepresented his intentions when he procured entry to the United States as a B-2 Visitor. Specifically, he presented himself as a tourist, when in reality he was returning to the United States to live and work. In addition, the record establishes that the Applicant procured unlawful presence from June 2007 until his departure in 2010. On appeal, the Applicant does not contest these findings of inadmissibility.

Waivers of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act of the Act are 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 record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). 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). 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 the Applicant asserts that his spouse will suffer economically and emotionally with debts, bills and family obligations. The Applicant's spouse states that because of the Applicant's waiver denial she is experiencing insomnia, restlessness, stress, high blood pressure, anxiety, and heart palpitations for which she is taking medication. The Applicant's spouse further maintains that she cannot provide for her family, meet expenses, and pay debts with her income alone. She asserts that she would have to close her business to get a regular job, which she contends would be difficult due to her age and the unemployment rate. She further maintains that the Applicant may get a job in Mexico, but wages are low and he would not be able to send money.

With respect to the emotional hardship referenced, a psychological evaluation of the Applicant's spouse submitted on appeal diagnoses her with major depressive disorder, single episode, general

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anxiety disorder, sleep disorder, and hypertension. The evaluation states that the spouse reports feeling stressed about possibly being separated from the Applicant, and describes the Applicant as attentive to the physical, social and psychological needs of the family. It further states that the spouse shows symptoms of depression, social withdrawal, decreased appetite, negative thinking, and poor concentration, plus neck, head and stomach pain, lethargy, and heart palpitations. The evaluation opines that the Applicant's presence, motivation and emotional support are paramount for his spouse's stability and social functioning, and states that the Applicant's spouse fears being unable to deal with anxiety and depression if separated from the Applicant. It further states that the spouse worries about the consequences on her children if separated from the Applicant and that their financial situation will become exacerbated. The evaluator recommends that the Applicant's spouse continue individualized counseling sessions.

In addition, financial documentation in the record includes bills and information related to the spouse's business and income, showing that she has significant financial obligations. The documentation in the record also establishes that the Applicant is gainfully employed and his income plays an important role in the financial well-being of the family. Based on a totality of the circumstances, the record establishes that the Applicant's spouse will experience extreme hardship if she remains in the United States while the Applicant relocates abroad.

We also find the record to establish that the Applicant's spouse would experience extreme hardship if she were to relocate to Mexico to reside with the Applicant. The Applicant asserts violence and lack of safety in Mexico make it impossible for his family to go there. The spouse maintains that she and her children are terrified of living in Mexico due to high crime. She cites submitted country information and news accounts of murders, drug traffickers, and kidnappings in Mexico. We note that the U.S. Department of State recommends deferred non-essential travel to the some areas of the state of [REDACTED] the Applicant's home state.

The spouse also asserts that she and her children, whom she states do not read or write Spanish, have never lived anywhere but the United States and that relocating would disrupt her children's education. The spouse contends that she and the Applicant would not have money to pay for education nor be able to obtain loans if they were unemployed in Mexico. She states that she and the Applicant are paying on a home and vehicles for her children to drive to school, and maintains that if they relocated they would have to sell the home and vehicles. The spouse also contends that the Applicant has no home, vehicle, connections or family in Mexico for support.

The Applicant's spouse further maintains that she has health problems for which she needs medication, and the psychological evaluation surmises that the spouse's depression would worsen if she relocated, and that she needs counseling and medication as prescribed by her medical provider.

The record establishes that the Applicant's U.S. citizen spouse was born and raised in the United States, that her parents, siblings, children, and grandchild are in the United States, and that she has no ties to Mexico. She would have to leave her family and her community, give up her business and possibly lose her home and she would be concerned about her safety as well as her financial well-

being in Mexico. The Applicant has thus established that his spouse would suffer extreme hardship were she to relocate abroad to reside with the Applicant due to his inadmissibility.

The Applicant has established that the bar to admission would result in extreme hardship to her qualifying relative spouse. 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 favorable factors in this matter are the extreme hardship the Applicant’s U.S. citizen spouse would face, regardless of whether she accompanies the Applicant or stays in the United States; hardship to the Applicant’s children; letters of support for the Applicant; community ties; gainful employment in the United States; home ownership; and the Applicant’s lack of a criminal record other than a 2010 arrest for DUI. The negative factors are the Applicant’s fraud or misrepresentation as detailed above and periods of unlawful presence and employment 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.

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In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of J-A-S-G-*, ID# 14320 (AAO Dec. 14, 2015)