



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

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

MATTER OF M-D-J-G-

DATE: APR. 13, 2016

APPEAL OF HARLINGEN, TEXAS, 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 the ground of inadmissibility for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident (LPR) status must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The USCIS Field Office Director, Harlingen, Texas, denied the Form I-601. The Director found the Applicant inadmissible under section 212(a)(9)(B) of the Act for having been unlawfully present in the United States for a period of one year or more and seeking admission within 10 years of her last departure from the United States. The Director then found that the Applicant had not established that denial of admission would result in extreme hardship to her U.S. citizen spouse, the only qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that her spouse's hardship would be extreme.

Upon *de novo* review, we will sustain the appeal.

**I. LAW**

The Applicant is seeking to adjust to LPR status and has been found inadmissible for being unlawfully present in the United States for one year or more. Section 212(a)(9)(B) of the Act states:

**(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.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the [Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

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.

Decades of case law have contributed to the meaning of extreme hardship. 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). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). 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); 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). 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).

## II. ANALYSIS

The only issue presented on appeal is whether the Applicant's spouse would experience extreme hardship if the waiver is denied, whether he remained in the United States without her or accompanied her to Mexico. The Applicant does not contest the finding of inadmissibility for unlawful presence, a determination supported by the record. Were she to depart or be removed from the United States, the Applicant does not indicate whether her spouse intends to remain in the United States or relocate with her to Mexico, but she claims that he would experience extreme hardship under either scenario. The claimed hardship to the Applicant's spouse from separation consists primarily of his inability to care for their developmentally disabled child, emotional hardship of separation, and financial hardship. The claimed hardship from relocation consists primarily of separation from family in the United States, the physical hardship caused by inadequate medical care in Mexico, and the financial hardship of providing for family members in the United States and a separate household in Mexico.

In support of these hardship claims, with the Form I-601 the Applicant submitted her statement and statements from her spouse and two of their children. On appeal, the Applicant submits statements from her spouse and their three children; a mental health evaluation for the Applicant's spouse and youngest child; medical documentation; letters from the Applicant's daughter's school, the Applicant's daughter-in-law, and the Applicant's employers; school records for the Applicant's youngest son; financial and property documentation; and country-conditions reports.

The evidence in the record, considered individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if he were separated from the Applicant. The record contains sufficient evidence to establish the hardship claimed rises above the common consequences of removal or refusal of admission to the level of extreme hardship. The Applicant also has shown that she merits a waiver of inadmissibility as a matter of discretion.

### A. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse.

The Applicant's spouse states that separation from the Applicant would be a "disaster," because he is suffering from cholesterol, high blood pressure, and a swollen liver, and he depends on the Applicant to assist him with his medication daily. In addition, he depends on the Applicant to care for their family, in particular for their youngest child, who has special needs requiring constant attention.

The record includes an evaluation by a licensed clinical social worker (LCSW), who diagnosed the Applicant's spouse with depression and anticipatory distress, because he fears that the Applicant will be deported. She states that the Applicant's spouse has been diagnosed with high blood pressure and a swollen liver and has been prescribed various medications. The record establishes that the Applicant's spouse requires regular attention for his hypertension.

(b)(6)

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The Applicant also submits numerous letters from family members, who indicate that her spouse depends on the Applicant to manage their household affairs. The record includes evidence describing the Applicant's spouse's need for the Applicant to assist him with math, reading, and writing. The LCSW diagnosed the Applicant's spouse with a "focal condition" of occupational impairment due to cognitive impairment.

The record establishes that the Applicant's youngest child, now age [REDACTED] also has an intellectual disability, speech disorder, and an adjustment disorder and that he requires continuous care, based on the LCSW's diagnosis. The LCSW's report indicates that the child has cognitive and intellectual disabilities, has always been in special education classes, requires constant monitoring and guidance, and experiences deficits in social skills and his basic self-care. She also states that the Applicant and her spouse are part of a group of parents learning to assist their children with vocational training.

Letters and financial documentation indicate that the Applicant's spouse would experience financial hardship were he to be separated from the Applicant. The Applicant's spouse states that the Applicant manages their household affairs, registers their children for school, ensures bills are timely paid, and does daily household chores. He states that the Applicant's income is needed to supplement his limited income as a scrap metal worker and that without her contribution providing primary care for their youngest child, he could not afford to pay for their son's care while also providing for the family. According to the LCSW's report, the Applicant is the primary caregiver for their son, and the Applicant also works to help with household expenses. The Applicant's daughter, in her letter, explains that she tried caring for her disabled brother, assisting her father with his medication, and doing household chores while the Applicant worked, but she failed two of her college courses as a result, because she could not take her final exams while caring for the family. The Applicant's 2014 Form 1040, U.S. Individual Income Tax Return, shows the family's adjusted gross income as \$17,355.00, which is significantly lower than the poverty guidelines for Applicant's family of four. The record shows that the Applicant's spouse would not be able to manage the cost of providing care for their youngest child, given the Applicant's role as his primary caregiver.

The Applicant has shown that her spouse would experience hardship by attempting to provide care for their youngest child and by facing alone the attendant complications of assisting their child with his intellectual disability. Taking the hardship related to the role the Applicant plays as primary caregiver to their youngest son into account, in addition to the difficulties the Applicant's spouse would face in managing the family's household without the Applicant, and the evidence of emotional, medical, and financial hardship he would experience if she were removed, we find that he would suffer extreme hardship upon separation from the Applicant.

## B. Discretion

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 negative factors in the Applicant’s case include her illegal entry and her unlawful residence in the United States. The positive factors in the Applicant’s case include the extreme hardship her U.S. citizen spouse would suffer if her waiver application were denied; her U.S. citizen children’s hardship; her lack of a criminal record; and her attributes as a hardworking, caring, and supportive person, as described in numerous letters from family, friends, employers, and others. We find that the positive factors in her case outweigh the negative such that 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. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of M-D-J-G-*, ID# 15876 (AAO Apr. 13, 2016)