



U.S. Citizenship
and Immigration
Services

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FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Brazil who misrepresented that he was born in El Salvador in order to apply for Temporary Protected Status and obtain work authorization. He 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 obtaining an immigration benefit through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and his wife, a United States citizen, is his petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the District Director* dated June 30, 2009.

On appeal, the applicant's attorney provided an appeal brief in support of the applicant's waiver application. The applicant's attorney asserts that the qualifying spouse would face emotional, psychological and financial hardships upon separation from the applicant. The applicant's attorney also stated that the qualifying spouse has never been to Brazil, has no family or friends there and does not speak Portuguese. The applicant's attorney asserts that the qualifying spouse would face financial hardships upon relocation to Brazil, and that she would lose her current long-term employment. Further, the applicant's attorney contends that the qualifying spouse has close family ties to the United States, has adapted herself to this country and has lived here for over fifteen years. The applicant's attorney also claims that the qualifying spouse would face psychological hardships if she were to relocate to Brazil.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief, affidavits and letters from the qualifying spouse and applicant, a copy of the applicant's employment authorization, letters from the qualifying spouse's doctors, psychological evaluations, copies of the qualifying spouse's prescriptions, financial documentation, articles regarding depression, a letter regarding health care in Brazil and other country condition materials, birth certificates and other identifications for the qualifying spouse's family members, a marriage certificate, documentation regarding the applicant's character, letters from friends and family, photographs and an Application to Register Permanent Residence or Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with the application. 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, in pertinent part:

- (1) 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.

A waiver of inadmissibility under section 212(i) 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 wife 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-I-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.

The AAO finds that the applicant’s spouse would suffer extreme hardship as a consequence of being separated from the applicant. With respect to the qualifying spouse’s emotional and psychological issues, the record contains psychiatric evaluations, copies of the qualifying spouse’s prescriptions, letters from doctors, articles regarding depression and letters from the applicant and qualifying spouse. In one psychiatric evaluation, dated April 23, 2009, the psychiatrist indicates that the qualifying spouse has a history of “recurrent major depression” and of alcohol abuse. In addition, the qualifying spouse suffers from depression, suicidal ideation, diminished appetite, sleeplessness, irritability and other psychological issues. The evaluation also states that the qualifying spouse has been taking antidepressant medications on and off to address her depression. Further, in the qualifying spouse’s most recent letter, she states that she will “die depressed” if she is separated from the applicant and credits him for helping her when her first husband left and she turned to alcohol. In addition, the applicant’s attorney asserts that the qualifying spouse would suffer financial hardships if the applicant returns to Brazil. The record contains financial documentation including tax returns, credit card expenses, a letter from the qualifying spouse’s employer, an earnings statement for the applicant, and letters from the qualifying spouse, the applicant, family and friends, supporting that the qualifying spouse has financial issues. The applicant has demonstrated that the qualifying spouse has significant credit card debt, and that the

applicant and qualifying spouse are living with the qualifying spouse's daughter's family due to their tenuous financial situation. Further, the record also substantiates claims that the qualifying spouse relies heavily on income provided by the applicant. As such, the record reflects that the cumulative effect of the emotional, psychological and financial hardships the applicant's spouse would experience in the United States without the applicant rises to the level of extreme.

The AAO further concludes that the applicant has demonstrated that her spouse would suffer extreme hardship in the event that she relocates to Brazil with the applicant. The applicant's attorney indicates that the qualifying spouse is a native of Bolivia, does not speak Portuguese, has never been to Brazil and has no friends or family there. Further, the applicant's attorney states that the qualifying spouse came to this country in 1993 from Bolivia (almost twenty years ago) and has two U.S. citizen children, one U.S. citizen son-in-law and four U.S. citizen grandchildren. The record contains identification documents confirming the qualifying spouse's family ties and their status in the United States. The applicant's attorney also asserts that the qualifying spouse would suffer financial hardship if she relocated to Brazil to be with the applicant because she has worked for the same employer for over fifteen years and has significant financial debt and responsibilities in the United States. The record contains two letters from the qualifying spouse's employer and documentation of her debt supporting such assertions. In her most recent letter, the qualifying spouse also states that she would be unable to visit her children in the United States, if she moved to Brazil, due to the cost of travel. Given the financial documentation in the record, it is likely that the qualifying spouse will not be able to afford visits to the United States from Brazil. In addition, the applicant's attorney indicates that the qualifying spouse could not find suitable psychiatric care in Brazil and that she will require mental health professionals if she is separated from her family. In addition to the above-mentioned psychological-related evidence in the record, the applicant also submitted various country condition materials regarding health care in Brazil. When considered in the aggregate, the hardships that would result if the applicant's wife relocated to Brazil, including separation from her family members, length of stay in the United States, as well as financial and psychological hardships, constitute extreme hardship.

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 United States citizen spouse would face if the applicant is not granted this waiver, regardless of whether she accompanied the applicant or remained in the United States, his support from family and friends, his ties to the United States and apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation regarding his nationality in order to obtain immigration benefits.

Although the applicant's violations of the immigration laws are 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 rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

We note that the district director denied the Form I-485, application to adjust status, solely on the basis of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act and the district director's denial of the Form I-601 waiver application. *Decision of the District Director*, dated June 30, 2009. The district director's denial of the Form I-485 was premature, as the applicant timely filed the instant appeal. Because the appeal will be sustained, there remains no basis, in the present record, for the denial of the adjustment application. Accordingly, the director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and issue a new decision.

ORDER: The appeal is sustained.