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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
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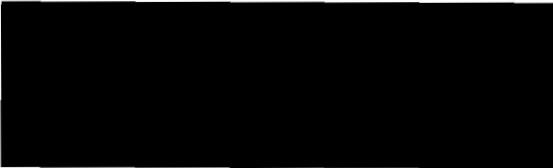
FILE: [REDACTED] Office: LOS ANGELES, CA

Date: **OCT 28 2009**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Myanmar who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having submitted a fraudulent Deed of Adoption in conjunction with a Form I-130 Petition for Alien Relative. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated December 20, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on February 27, 2004; a declaration from copies of medical records; a copy of the U.S. Department of State's Consular Information Sheet for Burma (Myanmar) and other background materials on country conditions in Myanmar; letters from the applicant's and employers; tax documents; a Psychiatric Report for ; a copy of naturalization certificate; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows, and counsel does not contest, that in 1992, the applicant, who was twenty-seven years old at the time, submitted a fraudulent Deed of Adoption as proof of his status as the son of a U.S. citizen. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact to procure an immigration benefit.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

In this case, [REDACTED] states that she has been very depressed and that she has “been in hell because

of this.” states she cannot sleep at night, wakes up constantly with a sore jaw from clenching her jaw, and has nightmares. She contends she takes sleeping pills, but that they do not help. She claims she keeps forgetting things and has almost burned down their apartment a couple of times because she forgot to turn off the stove. In addition, [REDACTED] contends she has been having anxiety attacks. She states she has a hard time breathing, her chest and shoulders become tight, her hands and feet tremble, and she feels dizzy. [REDACTED] states she does not want to talk to her friends or leave the house and just lies in bed. Furthermore, [REDACTED] states she suffers from chest pains, shoulder and back pain, and headaches every day. She explains that although she has seen three different doctors, no one can tell her what is wrong with her and contends that when her head starts pounding, it feels like her head will explode from all the pain. [REDACTED] states she sees a chiropractor and sees a Chinese doctor for acupuncture and traditional Chinese medicine, but that nothing seems to help. She also states she takes heartburn pills for her chest pain, an anti-depressant, and anti-anxiety pills, but they do not help. [REDACTED] states that the only thing that helps is a Vietnamese home remedy called “cupping,” which her husband does for her every week. She states her husband also massages her back, neck, and head throughout the week, relieving her pain. [REDACTED] describes her husband as “[her] doctor and [her] physical therapy,” and claims her husband has been taking care of her pain when no doctors have been able to help her with her pain. Moreover, [REDACTED] states that after her mother was diagnosed with cancer and subsequently died, she became very depressed. According to [REDACTED] she could not go to Myanmar to be with her husband because she does not speak Burmese and “would not have any legal right to be there or to even work.” She contends Myanmar is a country in horrible condition that is not safe. She states that given her current health problems, she would not survive in Myanmar. *Declaration of U.S. Citizen Spouse by [REDACTED]*, dated January 17, 2007.

Copies of [REDACTED] medical records indicate she has complained of headaches and lightheadedness for over a year since January 2006 and that they have grown in intensity and frequency. In addition, [REDACTED] medical records indicate she had six physical therapy sessions for her back and neck in September and October 2006. The records also indicate [REDACTED] has multiple fibroids in her uterus as well as multiple cysts in both breasts. According to the medical records, [REDACTED] underwent dilation and curettage in August 2004 for an “incomplete abortion.”

A psychiatric report in the record states that [REDACTED] has been suffering from severe depression since August 2003. The psychiatrist states that [REDACTED] mother, with whom [REDACTED] was living, was diagnosed with stage IV uterine cancer in the beginning of 2002. [REDACTED] mother underwent a year of chemotherapy and went through much pain and suffering before she passed away in August 2003. According to the psychiatrist, [REDACTED] helped take care of her mother during this difficult time. After her mother passed away, [REDACTED] experienced insomnia, anxiety, loss of appetite, impaired memory, inability to concentrate, feelings of guilt, and an extreme fear of death. The psychiatrist states that although [REDACTED] depression started to improve after she married the applicant in February 2004, unfortunately, in September 2004, [REDACTED] had a miscarriage, a fibroid was found in her uterus, and a lump was found in her breast. [REDACTED] became extremely depressed again. After her husband’s adjustment of status application was denied in June 2005, the psychiatrist states that [REDACTED] “fell into a very deep depression. She had

nightmares, severe trouble falling asleep and maintaining sleep. She experienced headaches. She feels episodic extreme anxiety attacks with tightness of chest, shoulder pain, difficulty breathing, trembling, palpitations.” According to the psychiatrist, [REDACTED] became very forgetful, had difficulty concentrating, and had to leave work due to her severe anxiety. The psychiatrist states that [REDACTED] “has inappropriate guilt over her mother’s death and her own miscarriage [and] feels that she needs to be punished.” The psychiatrist diagnosed [REDACTED] with major depressive disorder and a panic disorder. [REDACTED] is taking two prescription medications for her condition and “needs continuous individual psychotherapy and medication therapy.” The psychiatrist concludes that [REDACTED] [REDACTED] “is not able to help herself from coming out of her depression and panic anxiety [and] is very dependent and relies on her husband.” The psychiatrist states that if [REDACTED]’s husband is not allowed to remain in the United States to support her, [REDACTED]’s depression will get worse and she may not be able to continue working. *Psychiatric Report by [REDACTED]*, dated November 9, 2005.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

It is evident from the record that the personal and emotional hardship that would result from the denial of a waiver of inadmissibility constitutes extreme hardship. The record shows that [REDACTED] has significant mental health issues including a history of severe depression and a panic disorder for which she takes prescription medications, but that do not control her symptoms. The record also shows that [REDACTED] suffers from chest pains, shoulder and back pain, and headaches on a daily basis. In addition, the record shows that [REDACTED] lived with, and cared for, her mother, who underwent chemotherapy for a year before dying of uterine cancer. Moreover, the record shows that [REDACTED] suffered a miscarriage and has multiple fibroids in her uterus as well as multiple cysts in both breasts. As the psychiatrist stated, it is evident that [REDACTED] is extremely dependent on the applicant, who supports her and helps her to manage her pain through massage and “cupping.” *Psychiatric Report by [REDACTED]*; *Declaration of U.S. Citizen Spouse by [REDACTED]* *supra*. Considering [REDACTED]’s serious mental health issues, her issues with physical pain, and her dependence on her husband, the effect of separation from the applicant on [REDACTED] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship.

It would also constitute extreme hardship for [REDACTED] to move to Myanmar to avoid the hardship of separation from her husband. [REDACTED], who was born in Vietnam and does not speak Burmese, would need to adjust to a life in Myanmar after having lived in the United States since 1980, a difficult situation made even more complicated considering her physical and mental health issues. Furthermore, documentation in the record addressing country conditions in Myanmar states that U.S. citizens should exercise caution in Myanmar and avoid crowded public places, including shopping areas, malls, and markets. *U.S. Department of State, Consular Information Sheet for Burma (Myanmar)*, dated November 28, 2006. In addition and of particular concern for [REDACTED] given her physical and mental health problems, “[m]edical facilities in Burma are inadequate for even routine medical care[, and m]ost foreign drugs on sale have been smuggled into the country, and many are

counterfeit or adulterated and thus unsafe to use.” *Id.* In sum, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission..

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant’s attempt to adjust his status using a fraudulent Deed of Adoption and periods of unauthorized presence in the United States. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife, mother, grandmother, brother, and three uncles; the extreme hardship to the applicant’s wife if he were refused admission, particularly in light of his wife’s physical and mental health conditions; the fact that the applicant has worked and paid taxes while living in the United States; and the applicant’s lack of any criminal convictions.

The AAO finds that, although the applicant’s immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.