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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 09 2010

IN RE: Applicant: [redacted]

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: SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico 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 sought to gain entry into the United States by willfully misrepresenting a material fact. The director noted that the applicant attempted to illegally enter the United States via El Paso on February 28, 1983, by presenting a fraudulent Resident Alien Card. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States Lawful Permanent Resident mother.

The Service Center Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's parent and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Service Center Director*, dated April 22, 2008.

On appeal, the applicant states that his mother will suffer extreme hardship in his absence because her medical condition requires that she have a full-time caregiver and he is the only one who is both able and willing to provide his mother with the necessary care. The applicant submits additional evidence on appeal. *See Form I-290B and attachments.*

The record includes a letter in Spanish, with an English translation; a letter from the applicant's parent describing the hardship claim; a letter from the applicant; a letter from the applicant's daughter; a letter from Clinica Familiar Mexicana; a letter from [redacted]. *See letters from [redacted] the applicant's mother, [redacted] and [redacted] MBA, CPA, Administrator of Clinica Familiar Mexicana, dated April 29, 2008.* The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on February 28, 1983 the applicant attempted to illegally enter the United States via El Paso by presenting a fraudulent Resident Alien Card. The applicant was placed in exclusion proceedings and was removed from the United States on April 12, 1983.

The record also indicates that the applicant is the son of a United States Lawful Permanent Resident and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). On May 29, 2007, the applicant was admitted as a B-2 nonimmigrant visitor with authorization to stay until November 28, 2007. On July 30, 2007, simultaneously with the Form I-130 petition filed by his U.S. citizen daughter, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant filed a Form I-601 on February 12, 2008. The Form I-130 petition was approved on February 27, 2008.

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

> (i) 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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The applicant does not dispute that he attempted entry by fraud or misrepresentation. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having attempted entry by willfully misrepresenting a material fact.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant does not establish extreme hardship to his lawful permanent resident parent if she remains in the United States. The applicant's mother states that she depends on the applicant for physical and moral support; that because of her age and cardiac condition "it is very difficult to live without the attention and daily support" that [the applicant] can provide "for which [they] have planned to change [her] residence to the state of Louisiana where the applicant has found a steady job." The applicant's mother references a "medical letter," dated April 29, 2008, from [redacted] Administrator of Clinica Familiar Mexicana. The applicant states that his mother "is afflicted with a very serious cardiac

condition and hypertension;" that he is "the only person who is willing and able to care for her;" and, that he is "awaiting a positive INS decision" before he relocates his mother from Arizona to Louisiana where he resides. However, neither the applicant, nor his mother provides details of the care his mother needs and why the applicant is the only person who can provide the needed care. [redacted] states that the applicant's mother's "medical condition is very complex and based on the opinion of [redacted] requires a full-time caregiver;" and, "she needs daily assistance and supervision to assure a stable, secure and, healthy environment." [redacted] further states that the applicant "is the appropriate and only person who is available to care for the needs of [the applicant's mother]." [redacted], however, does not indicate how the applicant's mother presently copes in the absence of the applicant given that the applicant's mother resides in Arizona and the applicant lives in Louisiana, the nature and extent of care the applicant's mother requires and the extent to which the applicant is capable of providing the necessary care, and his basis for concluding that the applicant "is the appropriate and only person who is available to care for" his mother.

It is noted that the letter from [redacted] is not supported by medical documentation. The record does not include documentation from [redacted] on whose opinion [redacted] states that he based his assessment of the applicant's mother's condition and her need of a full-time caregiver. Without more specific medical documentation, the AAO is unable to determine the gravity of her condition and/or how the applicant is needed to help with her care. Also, [redacted] does not indicate the basis for his conclusion that the applicant "is the appropriate and only person who is available to care for" his mother.

The applicant's daughter, [redacted] states that her father (the applicant) provides her with financial and moral support for her and her daughter, because she has "had a very difficult time, because she have been suffering with anxiety and depression since the hurricane Katrina;" and, that she has been "under medical supervision." A letter, dated May 6, 2008, from [redacted], states that [redacted] "is currently undergoing treatment for anxiety and depression." These letters, however, do not indicate whether and how the financial and moral support the applicant provides his daughter and his daughter's anxiety and depression, impacts the applicant's mother, the qualifying relative.

The AAO notes that the applicant's daughter may experience some hardship; however, the applicant's daughter is not a qualifying relative for a waiver under section 212(i) of the Act and it has not been established that any hardship she may experience will cause hardship to the applicant's mother, the only qualifying relative.

It is noted that the applicant does not claim hardship to his mother if she joins him in Mexico. The AAO finds, therefore, that the applicant has failed to establish that his U.S. Lawful Permanent Resident parent would suffer extreme hardship if she joined him in Mexico.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.