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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: A200 396 519 Office: SACRAMENTO, CA Date: SEP 29 2010

IN RE: [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 PETITIONER:

[redacted]

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, with a fee of $585. 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

ACTION COMPLETED
APPROVED FOR FILING
Initials: JT Date: 6/22/11
FCO/Unit CSC

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

The applicant is a native and citizen of Jordan who has resided in the United States since May 20, 2009, when he was admitted as a visitor for pleasure. 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 having obtained a visa through fraud or misrepresentation of a material fact. The applicant is the son of a Lawful Permanent Resident mother and the beneficiary of an approved Petition for Alien Relative. He 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 with his mother.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated June 1, 2010.

On appeal, counsel for the applicant asserts the U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's mother's condition was not serious and that other family members were capable of caring for her. *Brief in Support of Appeal* at 1. Counsel further asserts that USCIS misapplied the law concerning the applicant's misrepresentation and states that the applicant did not fill out the form himself and does not recall his interview with a consular officer but states the officer spoke "imperfect Arabic." *Brief* at 2-3. Counsel further claims that the applicant's alleged misrepresentations were not material and relies on the decision of the U.S. Supreme Court in *Kungys v. United States* and decisions of the Board of Immigration Appeals (BIA) to support this assertion. *Brief* at 3-4. Counsel additionally states that the risk of terrorism remains high in Jordan and contends that this factor should be taken into consideration when assessing extreme hardship to the applicant's mother. *Brief* at 9. In support of the waiver application and appeal counsel submitted a declaration from the applicant, medical records for his mother, information on conditions in Jordan, and a psychological evaluation for his mother. The entire record was reviewed and considered in arriving at 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:

> **(1)** The [Secretary] may, in the discretion of the [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 [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 the 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.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Jordan who last entered the United States as a visitor for pleasure on May 20, 2009. The applicant was found to be inadmissible for having misrepresented his marital status when applying for a nonimmigrant visa in 2007. The applicant's mother is a seventy-one year-old native of Jordan and Lawful Permanent Resident. The applicant and his mother currently reside in Rancho Cordova, California.

Counsel asserts that the applicant did not willfully misrepresent his marital status on his nonimmigrant visa application and that such a misrepresentation would not have been material if he had. The applicant states that his mother filed a relative petition for him in 2001 and when he applied for a nonimmigrant visa in 2007, he was aware he might be able to immigrate soon. *Declaration of Maher al Khatib* dated May 4, 2010. The applicant further states that he relied on a friend to help him complete the visa application form and submit the application and does not recall what was said at his visa interview, but remembers that the staff member's Arabic was "not so perfect." *Declaration of Maher al Khatib.* The applicant states that his friend collected his information and returned with a completed visa application form and also states that he does not recall what was said to him at his interview at the consulate. The applicant's visa application, which he signed, states that he was married to a woman named [redacted] and also states that an immigrant visa petition had never been filed on his behalf. Notes from his interview indicate that he stated his wife was a teacher and they had two daughters and he was going to visit his brother and mother in California.

The Supreme Court held that a misrepresentation is material if it has a "natural tendency to influence the decisions of the [Government]." Forbes v. INS, 48 F.3d 439, 442 (9th Cir. 1995) (quoting

Kungys v. United States, 485 U.S. 759, 772 (1988)). *See also Matter of Tijam,* 22 I&N Dec. 408, 425 (BIA 1998). In *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

Counsel contends that the fact that the applicant was single and did not have a wife and children in Jordan did not render him inadmissible and USCIS has failed to establish that further inquiry was foreclosed by this misrepresentation that might well have resulted in a proper determination that he be excluded. The AAO notes that when applying for a visa, the burden of proving admissibility and eligibility for the visa remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Section 214(b) of the Act provides that every alien other than certain nonimmigrants shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer at the time of application for a visa that he is entitled to a nonimmigrant status. Although the applicant was not rendered inadmissible on the true facts that he was an unmarried beneficiary of an approved petition for alien relative, these facts were relevant to determining whether he intended to immigrate to the United States.[1] By stating that he had a wife and children in Jordan and concealing the fact that his mother has submitted an immigrant relative petition for him, the applicant sought to "cut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *See Matter of S- and B-C-, supra.* The AAO therefore concludes that the applicant's misrepresentation had a natural tendency to influence the decision of the consular officer to grant him a visa and the applicant has failed to meet his burden of establishing that he is not inadmissible under section 212(a)(6)(C)(i) of the Act for making material misrepresentations on his application for a nonimmigrant visa.

Counsel asserts that the applicant's mother would experience extreme hardship if he is denied admission to the United States because he is her primary caretaker and she is in poor health and requires assisted living. Counsel states that she is suffering from the effects of having her thyroid gland removed several years ago, suffers from chronic fatigue and joint pain and will require knee replacement surgery, and is especially attached to the applicant because he is her youngest child. *Brief* at 9. In support of these assertions counsel submitted medical records for the applicant's mother stating that she suffers from severe arthritis and is thinking of proceeding with knee replacement surgery and also suffers from hypertension and other conditions. The record does not contain a letter from her physician explaining her condition, but contains chart notes from a visit to a physician in July 2010 and other medical records including handwritten progress notes and results

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[1] The Foreign Affairs Manual states that an applicant for a nonimmigrant visa must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin. 9 FAM 41.31 N3.4 -- Ties Abroad.

from laboratory tests. Many of these documents are prepared for review by other medical professionals and contain medical terminology that is not understandable or abbreviations that are not discernible. Without more specific and intelligible information from the applicant's physician, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, medical records indicate that the applicant's mother has eight adult children, and the record indicates that the applicant's brother is a U.S. Citizen. No information on the whereabouts of the applicant's siblings was provided, and no statement was received from his brother indicating that he would be unable or unwilling to provide the applicant's mother with the assistance that she needs. Counsel states that the applicant's brother cannot provide this care because he has moved to Virginia, but the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A psychological evaluation for the applicant's mother states that she is worried about what will happen to the applicant and relies on him for emotional support and assistance with her daily activities. *See Psychological Evaluation from* [redacted] dated April 28, 2010. The evaluation further states that she appears to be suffering from a generalized anxiety disorder and a major depressive disorder. Although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation from Mr. Bader appears to be based on a single interview rather than an ongoing relationship between a mental health professional and the applicant's mother. Further, the report does not indicate that [redacted] or any other mental health professional provided any treatment for the applicant's mother, despite the diagnosis of anxiety and depression. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration resulting from an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

Although counsel asserts that the applicant's mother is suffering from emotional hardship due to worry over the applicant's immigration situation, the evidence on the record does not establish that any difficulties she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of child's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The record further indicates that the applicant's mother has been a Lawful Permanent Resident since 2001 and she suffers from various medical problems, but it also indicates that she has received medical care in Jordan, and based on statements made in her psychological evaluation, it appears that she has other adult children living in Jordan. Without more detailed information about her family ties or access to medical care in Jordan, the evidence on the record is insufficient to establish that the applicant's mother would suffer extreme hardship if she relocated to Jordan with the

applicant. Further, although counsel submitted information concerning the threat of terrorism in Jordan, particularly against Westerners, there is no indication that the applicant's mother would be at any particular risk due to current conditions and anti-American sentiment there.

Any emotional or physical hardship the applicant's mother would experience if he is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his Lawful Permanent Resident mother as required under section 212(i) the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.