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**U.S. Department of Homeland Security**
U.S. Immigration and Citizenship Services
*Office of Administrative Appeals*
20 Massachusetts Avenue, N.W. MS 2090
Washington, DC 20529-2090

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

**PUBLIC COPY**

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: DEC 0 1 2011

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:

[redacted]

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, with a fee of $630. 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 Field Office Director, Los Angeles, 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 Lebanon who was found to be inadmissible to the United States under section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, counsel indicates that U.S. Citizenship and Immigration Services (USCIS) found the applicant was inadmissible based on a signed letter from the applicant dated September 27, 1997. In this letter the applicant admits to entering the United States with a Lebanese passport belonging to [redacted] However, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act based on *Matter of Areguillan*, 17 I&N Dec. 308, 310, wherein the Board of Immigration Appeals (Board) states:

> The rule that an alien has not entered without inspection when he presented himself for inspection and made no knowing false claim to citizenship applies in determining whether an alien has satisfied the inspection and admission requirement of section 245 of the Act.

Counsel maintains that the applicant contests the inadmissibility charge because his entry to the United States in March 1989 under the name of [redacted] did not involve a false claim to citizenship.

For the reasons set forth in this decision, we find the applicant is inadmissible under section 212(a)(6)(C) of the Act for willful misrepresentation of a material fact.

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

> (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.

We take notice that the applicant's letter dated September 27, 1997, states:

> I entered the United States of America with a Lebanese Passport that belonged to [redacted]
>
> I paid for the passport, $1,300.00 dollars. [redacted], [sic] came to my house and delivered the passport to me.

> The date that I entered the United States was March, [sic]13th [sic], 1989.
>
> I came to understand that I was misrepresented by my attorney upon my application for labor petition.

The above-mentioned letter by the applicant states that the applicant used someone else's passport to gain admission into the United States. We consequently find the applicant inadmissible under section 212(a)(6)(C) of the Act for procuring entry into the United States based on the willful misrepresentation of the material fact of his identity and eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (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 sections 212(i) and 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative. Under section 212(h), qualifying relatives include U.S. citizen or lawful permanent resident spouses, parents, sons and daughters. Under section 212(i), the only qualifying relatives are U.S. citizen or lawful permanent resident spouses and parents. In the instant case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse. Hardship to the applicant and is considered only to the extent it results in hardship to the qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. 627, 631-32; *Matter of Ige*, 20 I&N Dec. 880, 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).

In rendering this decision, the AAO will consider all of the evidence in the record such as photographs, financial documentation, the applicant's wife's affidavit, and the U.S. Department of State Travel Warning for Lebanon.

On appeal, counsel states that the applicant has demonstrated extreme hardship to his spouse. Counsel avers that the applicant's spouse has no family ties to Lebanon, and the submitted documentation shows that the applicant's wife and child, who are Christian and American, will be in danger in Lebanon. Moreover, counsel states that the applicant's wife's relocation to Lebanon will result in the family's having no source of income. Counsel indicates that the applicant's wife's former spouse will not allow two of the applicant's stepchildren to leave the United States. Finally, counsel maintains that if the applicant's wife remains in the United States without her husband, the income tax returns reflect that she will lose 50 percent of the household income that is needed to support her three children.

The applicant's wife states in the affidavit dated September 14, 2006 that she will experience extreme hardship if the waiver is denied. She indicates that her former husband will not allow their two children to relocate to Lebanon. The applicant's wife maintains that she and her children are unfamiliar with the Arabic language and cultural practices in Lebanon, and that military outbursts

will endanger their lives. She states that as Christians they are a religious minority and in military actions the Muslims will mistreat them and use them when fighting.

We note that the submitted Travel Warning by the U.S. Department of State is consistent with the applicant's wife's concern about lack of safety in Lebanon. Furthermore, the warning conveys that heavy fighting occurred when armed [redacted] entered areas of Lebanon not traditionally under their control. U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Lebanon (September 10, 2008). In addition, the AAO takes notice that the current travel warning provides a similar warning to U.S. citizens about the risks of remaining in Lebanon. U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Lebanon (April 4, 2011).

With regard to the submitted evidence, we observe that the family court records reflect that the applicant's wife's former husband shares joint physical custody of their children, and the applicant's wife indicates that he will not permit the children to move to Lebanon. We also note that the applicant's spouse appears to have significant family ties to the United States.

However, we find that the applicant has not demonstrated that his wife will experience extreme hardship if she remains in the United States without him. Although we recognize that the applicant's departure may result in some financial hardship, the applicant's wife's employer states that the applicant's wife earns $22.00 per hour, and evidence has not been submitted to establish that her income coupled with child support provided by her ex-husband is insufficient to support her household. The applicant has also not demonstrated that the emotional hardship of separation would constitute hardship beyond the common results of inadmissibility or removal, and the applicant's spouse states that she has family support in the United States. Considered cumulatively, the evidence submitted does not indicate that separation would result in hardship that rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).[1] As the applicant

[1] We acknowledge that this case arises in the Ninth Circuit, and that the Ninth Circuit Court of Appeals rejected the holdings in *Ige* and *Pilch* on the basis that parents do chose to separate from their minor children and that attributing "the hardship posed by family separation to "parental choice" not deportation . . . is not consistent with the . . . responsibility both to determine extreme hardship based on individual experience, and to reach an express and considered judgment." *Perez v. INS*, 96 F.3d 390, 392-93 (9th Cir. 1996) (quoting *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1426 (9th Cir. 1987). The Ninth Circuit decisions address the remedy of suspension of deportation and not waiver of inadmissibility, and though the concepts articulated in suspension of deportation cases may be applied in the waiver of inadmissibility context, s*ee Cervantes-Gonzalez,* 22 I&N Dec. at 565 (footnote omitted), they are not binding in this proceeding. The AAO has consistently and uniformly interpreted the waiver provisions and corresponding Board's decisions to require

has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

The applicant has failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.

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that extreme hardship be the inevitable result of denial of admission, regardless of whether the qualifying relative chooses to relocate abroad or remain in the United States. We note further that waiver of inadmissibility cases, unlike the suspension of deportation cases discussed above, often concern hardship to adult qualifying relatives, who generally are free to choose for themselves whether to relocate abroad or remain in the United States.