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

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: LOS ANGELES Date: FEB 03 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,

for 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 [redacted] The record indicates that on December 31, 1995, the applicant attempted to procure entry to the United States by presenting a photo-substituted Mexican passport and a counterfeit Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence, stamp. The applicant was thus found to be inadmissible 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 attempted to procure entry into the United States by fraud and/or willful misrepresentation. The applicant was ordered removed by an Immigration Judge, and on January 10, 1996 she was deported. In August 1996 the applicant re-entered the United States, without inspection. The applicant is married to a United States permanent resident and she is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on February 2, 1998, and approved on June 2, 2002. 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 her lawful permanent resident spouse and U.S. citizen children, born in November 1996, December 1997, and October 2005.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated May 16, 2007.

On appeal, counsel states, generally, that the director "incorrectly states the standard for 'extreme' hardship," and the applicant's United States children "are an important part of the "Extreme Hardship" to the United States Citizen Spouse." It is noted that counsel states on the Notice of Appeal to the Administrative Appeals Office (AAO), that a brief and/or additional evidence will be submitted within 30 days. *Form I-290B*, filed June 15, 2007. However, the record does not reflect receipt of a brief or additional evidence. Therefore, the record must be considered complete.

The record includes declarations, dated September 11, 2007, and February 6, 2007, respectively, from [redacted], the applicant's spouse; a psychological assessment from [redacted] dated February 5, 2007; and, affidavits dated February 5, 2007, from [redacted] and [redacted], attesting to the applicant's character. 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, 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).

Counsel does not dispute that the applicant attempted to procure entry to the United States by presenting a photo-substituted Mexican passport and a counterfeit Form I-551, Temporary Evidence of Lawful Admission for Permanent Residence. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act for having sought to procure a nonimmigrant visa 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 husband 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's lawful United States permanent resident spouse asserts that he will suffer extreme emotional and financial hardship were he to reside in the United States while the applicant relocates to Mexico due to her inadmissibility. He states that due to the young ages of their children he is in need of his wife to help care for the family, and "life in Mexico is dangerous and not suitable [for] our young children. The applicant's spouse further states that he was recently diagnosed with diabetes and his wife is needed to assist him with his diabetes treatment. He contends that he would suffer hardship were his wife removed from the United States as she "is essential" for the care of the young children. Finally, the applicant's spouse asserts that his children would suffer extreme emotional hardship were their mother to relocate abroad due to her inadmissibility because they are

dependent on their mother, thereby causing him extreme hardship. *Declaration of* [redacted] dated September 11, 2007.

In support of the hardship claimed, a psychological assessment from [redacted] states that the applicant's spouse will suffer extreme hardship if the applicant is removed from the United States, and that the applicant's spouse needs the applicant to help with the care of the children. [redacted] also states that separating the children from their mother would cause them hardship. [redacted] further states that the applicant's spouse is fearful that his diabetes will worsen if his wife is not there to help him manage his diet; that he will be under additional stress caring for their youngest child who often has high fever and, needs her mother to care and comfort her at night and take her to the doctor. [redacted] also states that since the denial of the applicant's application for permanent residence the applicant's spouse has become "very depressed and anxious," and [redacted] interprets the results of a Beck Depression Inventory (BDI) test as indicating that the applicant has "a severe level of depression." [redacted] concludes that due to the applicant's "immigration problems" the two oldest children "already have some symptoms of depression and anxiety" and "would develop severe emotional and psychological problems." *Psychological Assessment of* [redacted] dated February 5, 2007.

It is noted, however, that the record does not include sufficient documentation to support the claims. The applicant submits a laboratory report dated January 31, 2007, indicating an abnormal "Fasting Glucose," but, there is no additional documentation regarding his, or his daughter's medical condition and required treatment and care. It is also noted that the psychological assessment from [redacted] is essentially a one-time report which is not supported by evidence. Though the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on an interview of the applicant's spouse and their three children, and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on an interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of exceptional hardship.

The applicant also claims that he will suffer financial hardship if his wife returns to Mexico. In his report, [redacted] states that "It would also be an extreme financial hardship if [the applicant's wife] returns to Mexico because [the applicant's spouse] cannot afford paying someone to take care of his children and do all the household chores." However, Dr. [redacted] does not indicate the basis for this conclusion. Also, the applicant does not provide evidence of the family's income and expenses, nor does he specify the household bills for their home in the United States, and the expenses he will incur to maintain a separate household in Mexico. Without details of the family's expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the family will face.

The AAO finds, therefore, that the applicant has failed to demonstrate that her United States permanent resident spouse would face hardship in the United States beyond that normally expected as a result of separation.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse references the problematic social conditions in Mexico. It is also noted that the applicant's spouse left Mexico to reside in the United States at a young age and has been residing in the United States for over 24 years. Although his mother resides in Mexico, he has spent the larger part of his adult life living and working in the United States and his ties to Mexico would, consequently, have diminished over these several years. As a result, he would suffer hardship in Mexico. In addition, the applicant's spouse expresses concern for the safety of his children in Mexico, stating that "Life in Mexico is dangerous and not suitable [for their] young children."

The AAO also notes that recently the United States Department of State warned of dangers in Mexico. See, United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning,* September 10, 2010.

The record reflects that the applicant's spouse would be forced to relocate to a country to which he is not familiar. He would have to leave his support network and his long-term gainful employment, and he would be concerned about his and his children's safety, health, academics, and financial well-being at all times while in Mexico. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

As discussed above, however, a review of the documentation in the record fails to establish that extreme hardship would result to the applicant's spouse in the United States due to separation. 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(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