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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

H5

[redacted]

FILE: [redacted] Office: WASHINGTON DC Date: FEB 18 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, D.C. The matter 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 Bolivia who was found to be inadmissible to the United States pursuant to 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 in order to procure an immigration benefit. The applicant is married to a 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 her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated August 5, 2008.

On appeal, counsel contends the applicant is not inadmissible for misrepresentation because she truthfully and to the best of her understanding answered the questions of the adjudicator. Counsel contends that even if the applicant is inadmissible, she established the requisite hardship for a waiver. Specifically, counsel contends the field office director failed to consider all of the factors cumulatively, particularly the current country conditions in Bolivia.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted], indicating they were married on October 27, 2001; copies of the birth certificates of the couple's two U.S. citizen children; a psychological evaluation of [redacted]; a sworn statement from [redacted] a copy of the U.S. Department of State's 2008 Travel Warning for Bolivia and other background materials; letters of support; copies of mortgage statements, tax returns, and other financial documents; copies of photographs of the applicant and her family; and 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 pertinent part:

> 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, in pertinent part:

> (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 . . . .

In this case, the record contains two sworn statements from the applicant. The sworn statements, which the field office director's decision quotes extensively, indicate that the applicant, who was born in Bolivia, entered the United States using an Argentinean passport. The sworn statement from the applicant's first interview indicates that she responded "yes" to the question, "[w]hen you entered the United States in 1998 as a visitor were you intending to stay permanently?" In addition, the sworn statement from the applicant's second interview states that she obtained the Argentinean passport because she got a birth certificate in Argentina which "said I was born there . . . ." The interviewing officer clarified whether the birth certificate indicated the applicant was "[b]orn in Argentina?" The applicant responded "yes," that the birth certificate said she was born in Argentina. *Records of Sworn Statement*, dated June 23, 2008, and April 17, 2008.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the applicant's sworn statements indicate that she obtained an Argentinean passport by using a birth certificate that incorrectly indicated she was born in Argentina. In addition, the applicant conceded she used that passport to enter the United States as a visitor even though she intended on staying permanently. Based on these factors, the AAO finds 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 willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [redacted], states that he has sacrificed much of his youth in order to save money and ensure a better way of life for his children. He states that his two children are very attached to their mother who cares for them exclusively while he works long hours. He states that his children would be devastated if his wife returned to Bolivia and [redacted]s fears he would not know how to care for them himself. In addition, [redacted] states that he and the children could not move to Bolivia to be with his wife. He states that he owns three houses, which are now worth $50,000 less than what he owes the bank because of the crisis in the real estate market. He states that if he moved to Bolivia, he would be unable to repay the bank. Furthermore, [redacted] states his children would lose the opportunities available to them in the United States. *Sworn Statement of* [redacted] dated July 14, 2008.

A psychological evaluation of [redacted] states that he came to the United States when he was twenty-one years old. According to the psychologist, [redacted] is the oldest of seven siblings and all of his siblings as well as his parents reside in the United States. [redacted] reported being very close with his family and seeing each other at least once per week. He stated that he co-owns a construction business with one of his brothers, and that his father and three of his brothers work in this company. The psychologist states that prior to his wife's immigration problems, [redacted]' life consisted of good family relationships, a successful business, and healthy children with no special emotional, medical, or educational problems. However, the psychologist states that ever since [redacted] wife's application for immigration status was rejected, he has become depressed, has sleep problems, nightmares, trouble focusing at work, and thinks obsessively about his wife's possible removal from the United States. According to the psychologist, [redacted] reported that he is the person on whom the company relies upon the most, and that if he moved back to Bolivia, the company might close without him. *Psychological Evaluation*, dated September 15, 2008.

Letters from [redacted] father, the applicant's brother, and the couple's church state that the applicant is a wonderful mother and wife. *Letter from* [redacted], dated July 12, 2008; *Letter from* [redacted], dated July 5, 2008; *Letter from* [redacted], dated July 3, 2008.[1]

[1] The record also contains a letter from Freddy Buendia that is written in Spanish and has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, this letter cannot be considered.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [redacted] will endure hardship upon the applicant's departure from the United States and is sympathetic to the family's circumstances. However, if [redacted] decides to remain in the United States, there is insufficient evidence to show that his hardship will be extreme. His contention that his children will be devastated by his wife's departure and that he may not know how to care for his children himself are difficulties that are typical of individuals separated as a result of deportation or exclusion and do not rise to the level of extreme hardship based on the record. As stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to [redacted], the only qualifying relative in this case. There is no allegation that either of the couple's children has any physical or mental health problem that would render [redacted]' hardship unique or atypical. In addition, the record indicates that [redacted] has an extensive support network that includes his parents and numerous siblings, all of whom he sees regularly and several with whom he works. Furthermore, [redacted] co-owns a lucrative business and the most recent tax documents in the record indicate he earned $83,200 in wages in 2007. [redacted] has not addressed whether his family members can help him with his children or whether he can hire a babysitter.

With respect to the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the psychological evaluation in the record is based on a single interview the psychologist conducted with [redacted] on August 25, 2008. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Therefore, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

Federal courts and the Board of Immigration Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Furthermore, the record does not show that [redacted] would suffer extreme hardship if he were to move back to Bolivia to be with his wife. The record shows that [redacted] is currently thirty-nine years old and was born in Bolivia. Although he contends his business may close without him, significantly, the letters from [redacted] father and brother do not address this claim. *Letter from* [redacted], *supra*; *Letter from* [redacted], *supra*. Regarding [redacted] contention that he would be unable to pay off the mortgages of the three houses he owns if he moved to Bolivia, there is insufficient evidence to show that his relocation to Bolivia would cause extreme financial hardship. The record shows that [redacted]

has over $50,000 in checking and savings accounts. *Affidavit of Support Under Section 213 of the Act (Form I-864)*, dated April 20, 2007 (indicating $53,572 in checking and savings accounts as well as $350,000 net cash value of real-estate holdings); *Letters from* [redacted], dated April 19, 2007 (indicating a total of $53,572 in three accounts). Although the record contains copies of the mortgage statements and tax documents, [redacted] does not address his regular, monthly expenses. In addition, [redacted] does not address whether he has tenants living in his houses and, if so, whether they may continue living there if he were to move to Bolivia. To the extent [redacted] wants his children to have the opportunities available to them in the United States, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *See Perez v. INS, supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

With respect to country conditions in Bolivia, the AAO recognizes that the U.S. Department of State classifies Bolivia as a medium to high crime threat country, describes Bolivia as one of the least developed countries in South America, and states that protests and strikes are not uncommon and have the potential to become violent. *U.S. Department of State, Country Specific Information, Bolivia*, dated August 10, 2010. Nonetheless, considering all of the evidence in the aggregate, the record does not show tha[redacted] relocation to Bolivia would be any more difficult than would normally be expected under the circumstances. In sum, the record does not show that [redacted] hardship would be extreme or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.