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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: PHILADELPHIA, PA Date: FEB 28 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.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of the Dominican Republic 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 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 his wife in the United States.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Acting District Director*, dated November 27, 2008.

On appeal, counsel contends the applicant established the requisite hardship. Specifically, counsel contends the applicant's wife, [redacted], would suffer extreme hardship if her husband's waiver application were denied due to her mental health illnesses caused by a history of abuse, loss, and trauma. In addition, counsel contends [redacted] has sole custody of two children from a previous relationship, both of whom suffer from serious and chronic mental health conditions, including Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder, and Generalized Anxiety Disorder, and who require psychotherapy, medication, and special education classes. *Applicant's Brief in Support of Appeal*, undated.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on June 17, 2007; a psychological evaluation of [redacted]; copies of [redacted] mental health records; copies of tax and other financial documents; numerous letters of support; 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 acting district director found, and the applicant does not contest, that he entered the United States using a fraudulent visa. *Cf. Applicant's Brief in Support of Appeal, supra,* at 9; *Statement in Support of I-601*, undated. Therefore, 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 wife, [redacted], states that she would be absolutely devastated if her family were split apart. She states that she and her husband both drive taxicabs and that without his extra income, she would not earn enough money to support her children. In addition, she states she cannot move to the Dominican Republic to live with her husband because her children do not speak Spanish. She states she fears slipping into depression again and has a long history of suffering from depression. [redacted] states that her husband is a huge help in helping her to overcome her depression. *Statement in Support of I-601, supra.*

A psychological evaluation of [redacted] states that [redacted] suffers from major depressive disorder and posttraumatic stress disorder (PTSD). According to the psychologist, who reviewed numerous documents related to [redacted] and her children for the evaluation, [redacted] has already suffered through the deaths of two sisters and her mother due to cancer and a brother due to

AIDS. In addition, [redacted] had two miscarriages late in her pregnancy, one at four months and the other at eight months. She also reported that her oldest son was taken away from her by his abusive father which has continued to be a source of pain for her. Furthermore, the psychologist states that [redacted] suffered from childhood sexual abuse, physical abuse, and rape. The psychologist states [redacted] has been in receiving medication and psychotherapy for depression since 2000.

Moreover, the psychologist contends that [redacted] two children also suffer from mental health disorders. [redacted]'s son, [redacted], was in special education classes, receives educational support services, and takes Wellbutrin to control his behavior and hyperactivity, as well as Risperdal, an antipsychotic medication used to treat aggressive adolescents. [redacted] daughter, [redacted] was diagnosed with ADHD, Oppositional Defiant Disorder, Generalized Anxiety Disorder, and clinical depression. On at least one occasion, Sharon heard voices in her head telling her to jump out of a window. She has been treated over a number of years with medication and intensive mental health services aimed at preventing inpatient psychiatric hospitalization in the future.

The psychologist contends the family lives in a neighborhood in Philadelphia that is crime-ridden and frequently has incidents of gunfire. The psychologist states that [redacted] feels safer with her husband living in the house and hopes to move out of the area, but requires his financial support. In addition, the applicant has helped raise [redacted] children and is "the backbone [of the family]." *Psychological Hardship Evaluation*, dated December 22 and 30, 2008.

Copies of [redacted] mental health records indicate that she was diagnosed with major depressive disorder in November 2004, has been in treatment since then, and takes medications for her symptoms. *Letter from* [redacted] dated June 17, 2008. Notes in the record also indicate she was diagnosed with PTSD and has a history of depression since the age of eight when she was sexually abused.

Upon a complete review of the record evidence, the AAO finds that the applicant's wife will suffer extreme hardship if the applicant's waiver application were denied. The record shows that [redacted] has a history of major depressive disorder and PTSD due to numerous tragic events in her life, including being sexually abused as a child. According to [redacted], she has also suffered several losses, including the deaths of her mother, two sisters, and a brother, and has had two miscarriages. The record shows that she has been in ongoing therapy since 2004. According to the psychologist, being separated from the applicant would be far more difficult for [redacted] than other individuals who are not suffering from mental disorders and a history of trauma. In addition, the record shows that [redacted] two children also have mental health problems for which they receive educational services and therapy. According to the children, the applicant has played a significant role in their lives. *Psychological Hardship Evaluation* at 11-12, *supra.* The psychologist found that the applicant's departure from the United States "would plunge the remaining family into chaos, and create and environment ripe for severe dysfunction." Considering these unique factors cumulatively, the AAO finds that the hardship [redacted] will experience if her husband's waiver application were denied is extreme, going well beyond those hardships ordinarily associated with a spouse's inadmissibility to the United States.

It would also constitute extreme hardship for [redacted] to move back to the Dominican Republic to avoid the hardship of separation from the applicant. Relocating to the Dominican Republic would disrupt the continuity of the mental health treatment that she and her children have been receiving. The AAO takes administrative notice that the U.S. Department of State has recognized that in the Dominican Republic discrimination against persons with mental health conditions and mental illness was common across all public and private sectors. *U.S. Department of State, 2009 Country Reports on Human Rights Practices: Dominican Republic*, dated March 11, 2010. In addition, there were few resources dedicated towards helping people with mental health problems. *Id.; see also U.S. Department of State, Country Specific Information, Dominican Republic*, dated June 22, 2009 (stating that the quality of medical care varies greatly and medical facilities throughout the country do not have staff members who speak or understand English). Moreover, according to [redacted], her children do not speak Spanish. [redacted], who is currently forty-five years old, has lived in the United States since she was twenty-six years old. [redacted] would need to readjust to a life in the Dominican Republic after having lived in the United States for almost twenty years, a difficult situation made even more complicated given her and her children's mental health conditions. In sum, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [redacted] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and periods of unauthorized presence. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife; the extreme hardship to the applicant's wife if he were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.