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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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: JAN 07 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,

Tariq Syed
for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 Mexico who was found to be inadmissible to the United States pursuant to 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 a visa to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a lawful permanent resident of the United States and the father of three United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 his wife and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 8, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) "as a matter of fact [and] [l]aw erred when they denied the waiver allegedly because the [applicant] failed to prove that his refusal of admission to the U.S. would result in extreme hardship to his qualifying relatives." *Form I-290B*, filed March 7, 2008.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's wife in English and Spanish[1], letters of support for the applicant and his wife, a letter from [redacted] regarding the applicant's wife's mental health, copies of plane tickets, and phone bills. The entire record was reviewed and considered, with the exception of the Spanish language statement, 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.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

[1] Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's wife is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present case, the record indicates that on June 10, 1997, the applicant attempted to obtain a nonimmigrant visa by presenting fraudulent paystubs. Based on the applicant's presentation of fraudulent paystubs in an attempt to obtain a nonimmigrant visa in order to enter the United States, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 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 (Board) 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).

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 first prong of the analysis addresses hardship to the applicant's wife if she relocates to Mexico. In a statement dated December 13, 2006, the applicant's daughter, [redacted], states the applicant resides in Mexico City, which is a violent city. In counsel's appeal brief dated March 31, 2008, counsel claims that all of the applicant's wife's family resides in the United States, her health is deteriorating, and "[t]he economy in Mexico is not good." In a statement dated March 2, 2008, the applicant's wife states her three children reside in the United States, and they all served in the military. Counsel states the applicant's "three children served [the United States] and went to war" and that "should be considered a traumatic event for this family." The applicant's wife states she has suffered "enormously because [she] see[s] how this affects [her] children."

Additionally, she states that since she is a lawful permanent resident of the United States, she "cannot be away for too long." Counsel claims that the applicant's wife was "recently diagnosed as having high blood pressure and tachycardia," and she also "suffers from constant migraines and feels depressed." In a statement dated December 8, 2009, the applicant's wife states that in February 2008, she was diagnosed with "herpes zoster." [redacted] states she is suffering from "depression," "a sleeping disorder," and

"migraine headaches." In a statement dated December 13, 2006, the applicant's daughter, [redacted] states she was diagnosed with depression. The AAO notes [redacted]'s prescription records. In a statement dated December 18, 2006, the applicant's son, [redacted], states "[k]nowing [the applicant] is still living in Mexico by himself worries and depresses [him] day in and day out." The AAO notes the concerns of the applicant's wife and children.

The AAO notes that no medical documentation has been submitted establishing that the applicant's wife suffers from any medical conditions or the severity of her medical conditions. Additionally, the record does not include supporting documentary evidence that the applicant's spouse cannot receive appropriate treatment for her claimed medical issues in Mexico. The record does not include documentary evidence of [redacted]'s medical issues. The AAO notes that no documentary evidence has been submitted to establish that the applicant's wife would experience emotional or financial hardship in Mexico. Further, the AAO notes that the applicant's wife is a native and citizen of Mexico, and the record does not establish that the applicant's wife does not speak Spanish. In fact, the AAO observes that the applicant's wife writes in Spanish. The AAO notes that the record establishes that the applicant's three children have all been released or discharged from active duty. The record establishes that [redacted]'s reserve obligation terminated on November 29, 2008, [redacted] reserve obligation terminated on December 20, 2008, and [redacted] reserve obligation terminated on April 14, 2008. Other than a brief reference in the applicant's spouse's December 8, 2009 statement, the record does not include evidence that any of her children are currently serving in the military and the nature of their service. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's wife would experience if she joined the applicant in Mexico, the AAO does not find the applicant to have established that his wife would suffer extreme hardship upon relocation.

In addition, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. Counsel states "[t]his family has already been separated for over 10 years," and the applicant's wife is suffering from several health conditions. As noted above, the applicant's wife states she was recently diagnosed with high blood pressure and tachycardia, and she suffers from constant migraines and depression. Additionally, she states she was diagnosed with herpes zoster. The applicant's wife claims that her "health has been very affected" because of the separation from the applicant. The applicant's wife states she is "very depressed and unmotivated to live." In a letter dated January 26, 2010, licensed social worker [redacted] states she has been seeing the applicant's wife "to help her cope with severe stress and anxiety." [redacted] indicates that the applicant's wife "has developed this condition due to the long-tern stress of dealing with life demands without the support and help of [the applicant]." The AAO notes the applicant's wife's claims of her mental and physical health.

Counsel states the applicant's "three children served [the United States] and went to war" and that "should be considered a traumatic event for this family." The AAO notes that the record establishes that the applicant's three children have all been released or discharged from active duty. The record establishes that [redacted]'s reserve obligation terminated on November 29, 2008, [redacted] reserve obligation terminated on December 20, 2008, and [redacted] reserve obligation terminated on April 14, 2008. The applicant's wife states she has suffered "enormously because [she] see[s] how this affects [her] children." As noted above, the applicant's daughter, [redacted], states she is suffering from

"depression," "a sleeping disorder," and "migraine headaches." The applicant's daughter, [redacted], states she was diagnosed with depression, and the applicant's son, [redacted] states he is worried and depressed. The AAO notes [redacted] prescription records. The AAO notes the applicant's wife's concerns for her children. The applicant's wife states because the applicant resides in Mexico, she is "forced to travel in order to continue with [their] marriage." She claims that "[t]his continuous travel has also affected [the applicant] in his employment and [they] are in a bad economic situation." Additionally, she states she has not "been able to hold a steady job." The applicant's wife states the applicant "is also alone and that really worries [her]," and he is diabetic. The AAO notes the applicant's wife's concerns.

The AAO notes that other than statements from counsel and the applicant's wife, the record does not establish that the applicant or his wife are suffering from any medical conditions, how serious those medical conditions are, or what treatment they may require. The record does not include documentary evidence of [redacted] medical issues. Additionally, while the AAO notes the applicant's wife's claim of financial hardship, the record contains no documentation that establishes her income or expenses in the applicant's absence, or that the applicant's employment has been affected. Other than a brief reference in the applicant's spouse's December 8, 2009 statement, the record does not include evidence that any of her children are currently serving in the military and the nature of their service. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes that the applicant's wife may be experiencing some financial hardship in travel expenses to Mexico; however, she has not provided sufficient documentation to establish her financial situation. Accordingly, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

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

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.