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

U.S. Citizenship
and Immigration
Services

[redacted]

H5

FILE: [redacted] Office: NEW YORK, NY Date: JAN 14 2011

IN RE: [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 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Jamaica 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 filing fraudulent documentation in an attempt to obtain immigration benefits. She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 29, 2007.

On appeal, counsel for the applicant asserts that the applicant should not have been declared inadmissible and that the applicant's spouse will experience extreme hardship if she is removed. *Form I-290B*, received December 26, 2007.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

The record indicates that the applicant filed an application for adjustment of status in 1991 and submitted a fraudulent marriage certificate in support of that application. As such the applicant attempted to obtain an immigration benefit by willful misrepresentation.

Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) because she was unaware that a fraudulent marriage claim had been made by her previous representatives, and refers to a records search by New York City which did not turn up a marriage certificate.

Counsel's assertions are not persuasive. The applicant submitted a fraudulent marriage certificate – something New York City would not have because it was fake – in filing for adjustment of status. That application has her correct biographic information, including that of her parents. *See G-325 biographical questionnaire*, February 25, 1994. The record contains a Form I-485 dated December 3, 1993, and signed by her. Counsel's assertions are not supported by any probative evidence. Therefore, the applicant has not shown that she was erroneously found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record includes, but is not limited to, the following evidence: counsel's brief; a statement from the applicant's spouse; a psychological impact statement from Lisa Slater, Licensed Clinical Social

Worker (LCSW); statements from family members of the applicant; copies of life insurance records, property and mortgage records, bank records and statements, bills, credit card statement and utilities invoices; medical records pertaining to fertility treatments; and a Form I-864, Affidavit of Support filed on behalf of the applicant by her spouse with her I-485. The record also includes documents filed in conjunction with a previous I-485 application filed by the applicant in 1991.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 spouse 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.

On appeal, counsel for the applicant asserts the applicant's spouse will experience physical, emotional, financial and psychological hardship if the applicant is removed. Counsel cites to *Matter of Cervantes Gonzalez, supra,* and asserts that, based on the test provided by that decision the

applicant has established extreme hardship and her waiver should be granted. The AAO would note that the decision in *Cervantes-Gonzalez* provides guidance on what factors may be considered hardships, but it is the applicant's burden to establish that those hardship factors exist in the case at bar.

In this case, with regard to hardship upon relocation, counsel asserts the applicant's spouse suffers from depression and refers to a psychological impact statement by [redacted] regarding the applicant's spouse. She states that all of the applicant's spouse's family reside in the New York area and that if he were forced to relocate to Jamaica both he and the applicant would be unemployed and that he would be forced to abandon his family and friends in New York.

The impact statement by [redacted] asserts that any family separation at this point would be 'devastating,' but fails to specifically articulate any basis of hardship if the applicant were to relocate to Jamaica with the applicant. The record contains some statements from friends and family members of the applicant, but these are insufficient to support counsel's assertions that the applicant's spouse would experience physical or emotional hardship upon relocation that rises to an extreme level. There is insufficient documentary evidence to support counsel's assertions of financial hardship upon relocation as well, such as country conditions materials or other documentation.

Even when considered in the aggregate, there is insufficient evidence in the record to establish that the hardship impacts asserted upon relocation would rise above the impacts commonly experienced by the relatives of inadmissible aliens.

With regard to hardship upon separation, counsel asserts that the applicant's spouse would experience emotional, financial and psychological hardship if the applicant were removed. He refers to the psychological impact statement by [redacted], and asserts that the applicant's spouse's grandmother and sister rely on the applicant physically, emotionally and financially.

The applicant's spouse has submitted a statement. In his October 9, 2006 letter he explains that his wife provided physical assistance to him and his entire family by taking his grandmother to doctor's appointments and running family members on other errands. He asserts that she has been there emotionally for his family as well, providing moral support for his sister and brother and caring for their children in times of need. He also asserts that the applicant has provided for his brother financially and that without her income he would not be able to afford their house payments.

[redacted] evaluation concludes that the applicant and his family would be emotionally devastated if the applicant were removed. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the LCSW and was initiated by a referral by the applicant's attorney, not a medical doctor. There is no other evidence in the record indicating the applicant's spouse is receiving any professional treatment or specialized care, or that he has an ongoing relationship with a mental health professional. In addition, the report fails to provide a basis for

distinction between the emotional impact on the applicant's spouse from the emotional hardship commonly experienced by the relatives of inadmissible applicants. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional. The evaluation does not serve as sufficient evidence to establish that the applicant's husband will face extreme emotional consequences should he reside apart from the applicant.

With regard to financial hardship it is noted that, although the present appeal was filed in December 2007, the applicant has not supplemented the record with recent financial documentation beyond previously provided materials that are dated 2006 or earlier. A Form I-864 submitted by the applicant in relation to her I-485 indicates that she earned $13,520 in 2005, while IRS Forms W-2 for the applicant's spouse indicated that he earned $72,548 for that year. There is no documentary evidence that the applicant supported her spouse's brother or sister financially. Nor has the applicant shown that her spouse faces uncommon economic needs. Based on these findings there is insufficient evidence to support the applicant's spouse's assertions that he will suffer financial hardship if he remains in the United States.

A further examination of the record reveals insufficient evidence to indicate that the applicant provides physical support for the applicant's spouse's family. The applicant has not established that her spouse will have to bear additional responsibilities should she no longer be available to assist his family members.

When the impacts asserted in this case are examined in the aggregate, the applicant has failed to establish that her spouse's hardship will rise above the challenges commonly experienced by the relatives of inadmissible aliens who remain in the United States such that it constitutes extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. As the record fails to establish extreme hardship to a qualifying relative, no purpose would be served in examining whether the applicant warrants a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.