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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 Immigrationn Services

[redacted]

H5

FILE: [redacted] Office: VIENNA, AUSTRIA Date: JAN 24 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Vienna, Austria, 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 Romania 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 attempting to procure a benefit under the Act through fraud or the willful misrepresentation of a material fact: to wit, the applicant submitted fraudulent documents to a Consular Officer in order to obtain a non-immigrant visa to enter the United States. The record indicates that the applicant is married to a Lawful Permanent Resident of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The OIC found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated September 5, 2008.

On appeal, the applicant, through counsel, asserts that the applicant's spouse would suffer extreme hardship if the applicant's waiver request is denied. *Form I-290B* and accompanying letter from counsel dated October 7, 2008.

The record includes, but is not limited to, a letter from counsel dated October 7, 2008, a statement of hardship from the applicant's spouse, supportive letters from friends, a letter of employment from the applicant's spouse's employer, a copy of a Form 1099 (Miscellaneous Income) for the applicant's spouse for 2006, copies of bank statements from Sun Trust Bank, and a copy of a Psychological Assessment of the applicant's spouse by [redacted] 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.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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 reflects that on October 10, 2002, the applicant attempted to obtain a tourist visa by submitting fraudulent documents and making false statements to a Consular Officer in support of the visa application. In September 2007, the applicant submitted an application for an immigrant visa at the United States Embassy in Romania, as a dependent of her husband, Costica Sfintitchi, who was granted lawful permanent resident status as the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker. At her immigrant visa interview on February 7, 2008, the Consular Officer found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. On the same date, the applicant filed a Form I-601. On September 5, 2008, the OIC denied the applicant's Form I-601, finding that the applicant had attempted to procure an immigration benefit by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. The applicant timely appealed the decision.

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 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) [redacted] 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 record reflects that the applicant's spouse, Costica Sfintitchi, is a 39-year-old native of Romania and a Lawful Permanent Resident of the United States. The applicant and her husband were married in Romania and they have two children. The record reflects that the two children currently reside with the applicant in Romania. The applicant's spouse asserts that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's spouse asserts that he misses the applicant and his children, that he feels like an incomplete man without his family. The applicant's spouse asserts that separation from his family "is eroding at the very essence of my existence. My children are separated from me. During the years they need me the most, they do not have me and I do not have them." *See Statement of Hardship by* [redacted] dated October 6, 2008. The applicant's spouse also states that separation from his family has left him powerless, that he suffers from headaches, lack of appetite and sleepless nights, and that his job performance has been adversely affected. *Id.* As to the financial hardship of separation, the applicant's spouse asserts that he cannot

afford to travel to Romania to see his family and that "missing time from work drives me more into debt." *Id.* The record contain a Psychological Assessment by Dr. [redacted] Clinical Psychologist. [redacted] states that the applicant's spouse is suffering from Dysthymic Disorder, a chronic underlying form of Depression. [redacted] states that the applicant's spouse has been depressed for several years, largely as a result of separation from his family. *See Psychological Assessment of Costica Sfintitchi by* [redacted] *Clinical Psychologist,* dated February 20, 2008.

The AAO acknowledges that separation from the applicant may have caused some hardship to the applicant's spouse, however, the evidence in the record is insufficient to demonstrate that the challenges the applicant's spouse faces meet the extreme hardship standard. While the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by [redacted] is based on one interview with the applicant's spouse. In that the conclusions reached in the submitted assessment is based solely on this single interview of the applicant's spouse, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. As to the financial hardship claim by the applicant's spouse, the record does not contain information regarding the family's income and expenses. Given the lack of information about the family's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's spouse. Finally, hardships faced by the applicant's children as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that such hardships impact the applicant's spouse. In this case, the applicant has not established that her spouse has suffered extreme hardship as a result of being separated from his children. Accordingly, the applicant has failed to establish that the challenges her spouse faces are unusual or beyond the normal results of removal or inadmissibility to the level of extreme hardship.

Regarding relocation, the applicant's spouse asserts that he does not want to relocate to Romania because he wants to make a life for himself and his family here in the United States, that he will not be able to find a job in Romania that will make use of the expertise he has acquired here in the United States, that he will not be able to earn enough money in Romania to take care of his family and that "absent a source of income in Romania, my entire family would be doomed to destruction." *See Statement of Hardship by Costica Sfintitchi,* dated October 6, 2008. The applicant's spouse also asserts that as a child growing up in Romania, he suffered hunger and misery due to the lack of finances and does not wish that to happen to his children.

While the AAO acknowledges the claims made by the applicant's spouse, it does not find any evidence in the record to support the claims. The record does not contain country condition information on Romania to show that the applicant's spouse will not be able to find employment there. The AAO notes that the applicant's spouse is a native of Romania, who has spent most of his life there. He has not addressed his family ties there, but the record does not reflect any family ties in the United States. There is no evidence in the record showing the applicant's living conditions in Romania, or otherwise demonstrating the conditions the applicant's spouse is likely to face if he moves there. Additionally, the AAO notes that other than the statement from the applicant's spouse, the record does not contain any evidence of financial, medical, or other types of hardship that the applicant's spouse would experience if

he relocated to Romania to live with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to Romania.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

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

ORDER: The appeal is dismissed.