identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

H5

Date: MAY 27 2011 Office: PHILADELPHIA, PA FILE: [redacted]

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 Field Office Director, Philadelphia, Pennsylvania, 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 Trinidad and Tobago 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the father of a United States citizen. 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 son.

The Field Office 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 Field Office Director*, dated January 5, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "failed to provide any reason for the denial of the I-601." *Form I-290B*, filed January 29, 2009. Additionally, counsel claims that "[e]vidence in support of the waiver overwhelmingly establishes extreme hardship upon the U.S. citizen spouse based upon her emotional and financial needs as well as her need to have [the applicant's] support in the upbringing of their two (2) minor U.S. children."[1] *Id.*

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and his wife, pay stubs for the applicant and his wife, employment verification letters for the applicant and his wife, tax documents, household bills, bank statements, utility bills, a lease agreement, and a consular information sheet on Trinidad and Tobago. 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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

---

[1] The AAO notes that the record establishes that the applicant and his wife have one United States citizen child.

> (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 in 2000, when the applicant obtained a B-2 nonimmigrant visa, he failed to indicate that he had previously visited the United States, had been denied admission, and had surrendered his previous visa. Based on this misrepresentation, 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 his child 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).

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 a qualifying relative, 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 counsel's appeal brief dated March 5, 2009, counsel highlighted numerous deficiencies in the Field Office Director's decision, and discussed precedent decisions to support his assertions. However, the AAO notes that the applicant's case will be reviewed *de novo*, and the AAO will apply the appropriate legal standards and precedent case law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The first prong of the analysis addresses hardship to the applicant's wife if she relocates to Trinidad and Tobago. In a statement dated June 26, 2007, the applicant's wife states she knows "that Trinidad is currently experiencing an increase in the number of violent crimes." Counsel states "[t]he hardship that the [applicant's wife] would endure if she emigrated to Trinidad is extreme in that [the applicant's wife], [the applicant], and their young son would be subjected to a life of crime and violence in a crime ridden country." Counsel states the applicant's wife will suffer extreme mental and emotional hardship worrying everyday about "her and her child's welfare." The AAO notes that in support of their claims,

the applicant submitted a U.S. Department of State consular information sheet on Trinidad and Tobago dated April 13, 2007. The AAO notes the safety concerns in Trinidad and Tobago.

The applicant's wife states she has "always lived in the United States and cannot fathom the idea of raising [her] child anywhere else but in this country." Counsel states the applicant's son would be deprived "of the healthcare, educational, and occupational opportunities available to him in the United States." The applicant's wife states it "would be very difficult for [her] and [her] son to find adequate health care [sic] in Trinidad." She also states that she is very close to her family members. The AAO acknowledges the claims made regarding the difficulties the applicant's wife would face in relocating to Trinidad.

The AAO notes the applicant's wife's concerns regarding access to healthcare in Trinidad for her and her son; however, no medical documentation has been submitted establishing that she and/or her son suffer from any medical conditions or the severity of their medical conditions. 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 other than the U.S. Department of State consular information sheet on Trinidad and Tobago, the record does not include supporting documentary evidence that the applicant's wife and/or son cannot receive appropriate treatment for any medical conditions in Trinidad. The AAO acknowledges that the applicant's wife is a native and citizen of the United States and that she may experience some hardship in relocating to Trinidad. The AAO notes that the applicant submitted the U.S. Department of State consular information sheet on Trinidad and Tobago; however, this information sheet does not establish that the applicant's wife would be unable to obtain employment in Trinidad nor does it show that she would face general conditions there what rise to an extreme level. The applicant's wife has resided in the United States for her entire life, yet the applicant has not asserted or shown that she would face unusual hardship due to now residing outside the country. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Trinidad.

In addition, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. The applicant's wife states "[t]he mere thought of [her] life without [the applicant] is unbearable." Counsel claims "the combination of family separation combined with the much more extreme impacts [sic] of country conditions in Trinidad which includes reliable evidence of rising crime and violence" is an extreme hardship. Counsel states the situation the applicant will be placed into in Trinidad includes "rising crime and violence...and a lack of quality medical care." Counsel claims that the separation of the applicant's wife from the applicant, "coupled with the violence in Trinidad, and the uncertainty [the applicant's wife] will feel every day concerning [the applicant's] welfare, are an 'extreme impact' and clear evidence of extreme mental and emotional hardship." The AAO notes the emotional concerns of the applicant's wife.

Counsel claims that if the applicant "is permanently removed to Trinidad and his wife remains in the United States it would cause her to live without her husband, thereby imposing on her a de facto divorce by government decree, or force her to divorce her husband to have a life in the United States."

The AAO notes that USCIS has only determined that the applicant is inadmissible to the United States for his misrepresentation and he has not demonstrated extreme hardship to his wife if she were to join him in Trinidad or remain in the United States. It is the choice of the applicant and his wife to have her join him in Trinidad or remain in the United States without him. As it is also the choice of the applicant and his wife to remain married or to divorce.

In a statement dated June 26, 2007, the applicant states he "hope[s] to instill in [his] son...a sense of pride and respect, something which could not happen without [his] ability to remain in the United States." Counsel states if the applicant returns to Trinidad, his son will "lose his father" and the applicant's wife will "have to care for their USC child alone." Counsel claims that "[t]hese traumatic changes of caring for her child alone would naturally result in extreme emotional hardship to [the applicant's wife]." The AAO notes the concerns for the applicant's son.

Counsel states the applicant's wife "is the primary breadwinner for the family." The applicant's wife states the applicant "is [their] primary source of child care [sic] for [their] son." Counsel claims that the applicant's wife "has no one else she can trust to watch their child." The applicant's wife states she "would have to incur the additional cost of childcare, which [she] would not be able to afford." Counsel also claims that the applicant's wife will have to send money to the applicant in Trinidad. Additionally, counsel states the applicant's wife will have to travel to Trinidad to visit the applicant and "[t]hese expenses will adversely affect the financial strength of [the applicant's wife] and their child." Counsel states the financial obligations for the applicant and his wife "total over $2,100 per month." The applicant's wife states their monthly debt does not include "the additional expense of groceries or the cost of transportation and any medical needs." She claims that she would have to take on a second job just to afford basic items. The AAO notes that the record establishes that the applicant's wife is currently employed as a banker with an annual salary of $30,160.00. *See compensation history from Citizens Bank*, dated December 17, 2008. However, the AAO notes the financial concerns of the applicant's wife.

The AAO finds the record to include some documentation of the applicant's wife's income and expenses; however, the utility and household bills are from 2006 and 2007, and no updated bills have been submitted establishing her current financial situation. Therefore, the submitted material offers insufficient proof that the applicant's wife will be unable to support herself in the applicant's absence. The AAO notes that the applicant's wife may encounter some economic challenges upon the applicant's departure; however, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a spouse remains in the United States alone. Additionally, the submitted evidence does not establish that the applicant would be unable to obtain employment in Trinidad and, thereby, financially assist his wife from outside the United States. The AAO acknowledges that the applicant's wife may be concerned for the applicant in Trinidad and he may suffer some hardship in returning to Trinidad; however, the AAO finds that the applicant has not shown that hardship to himself will elevate his wife's challenges to an extreme level. Additionally, the record does not establish that the applicant will face dire circumstances or any harm in Trinidad. Further, while it is understood that the separation of spouses often results in significant emotional challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO also notes that the record does

not establish that the applicant's wife cannot travel to Trinidad to visit the applicant. Additionally, the AAO acknowledges that the applicant's son may suffer some hardship in being separated from the applicant; however, the applicant's son is not a qualifying relative and the applicant has not established that his son will experience challenges that elevate his wife's difficulty to an extreme hardship. Based on the record before it, and considering the potential hardships to the applicant's spouse both individually and in the aggregate, 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.