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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

[redacted]

#5

DATE: MAY 31 2011 Office: [redacted] 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of [redacted] who used an [redacted] passport belonging to another person to enter the United States. The applicant 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). 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 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), date of service August 21, 2009.

On appeal, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is excluded from the United States. *Form I-290B*, received September 21, 2009.

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 entered the United States under the Visa Waiver program by displaying an [redacted] passport belonging to another person. As the applicant procured admission into the U.S. by fraud, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

The record contains, but is not limited to, the following evidence: a brief from counsel; a statement from the applicant's spouse; medical records and progress reports pertaining to the applicant's spouse; a psychological evaluation of the applicant's spouse by [redacted] country conditions materials on [redacted]; residential property records for the applicant's spouse; pay stubs and tax documents for the applicant's spouse; and photographs of the applicant, her spouse and their family.

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 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 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.

The AAO will first examine hardship upon relocation. Counsel for the applicant explains that the applicant's spouse has been diagnosed with Multiple Sclerosis and periodically experiences debilitating symptoms related to this disease. *Brief in Support of Appeal*, received October 20, 2009. Counsel asserts there is little knowledge of the condition in [redacted] and that treatment for the condition would not be available. Counsel also asserts that the applicant would not have access to adequate medical facilities, would not be able to find employment sufficient to support his family and would have to give up his current employment.

The record contains an April 1, 2008, statement from [redacted], confirming that the applicant's spouse has been diagnosed with Multiple Sclerosis. [redacted]'s has also described the potential impact it could have on the applicant's spouse's ability to function, stating that he feels that the applicant's spouse's symptoms will worsen and that he will require assistance in his daily activities. Dr. Lewis also notes that there is no cure for the disease. There are also several records and progress reports from the desk [redacted], detailing the history of the applicant's spouse's diagnosis and treatment. Counsel has submitted documentation discussing Multiple Sclerosis generally and the impact it can have on persons with the disease. This documentation

confirms that Multiple Sclerosis is incurable and that those suffering from Multiple Sclerosis often face "increasing limitations."

These documents are persuasive evidence that the applicant has Multiple Sclerosis, a serious neurological disorder which can incapacitate its victims. Although counsel asserts that there is little knowledge of the disease or facilities for its treatment in [redacted] are not supported by the record, there is no evidence in the record to establish the lack of appropriate medical care in [redacted]. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). However, the record does establish that the applicant's spouse has a longstanding relationship with his doctors. Given this longstanding relationship and the fact that the applicant's spouse has Multiple Sclerosis, the AAO finds that the disruption in his medical care that would result from his relocation to [redacted] would result in an uncommon impact. The AAO will give due consideration to this factor in its determination of extreme hardship.

The record also contains country conditions materials discussing the economic situation in [redacted]. While general country conditions materials are not usually sufficient to establish extreme hardship to a particular qualifying relative, in this case the record supports that any financial impact of relocation on the applicant's spouse would be compounded by the fact that he has a serious disease and would be dependent on a higher level of medical care for his condition. He would need significant medical attention and monitoring, which, in light of the general conditions, the lack of infrastructure and agrarian economy in [redacted], would be difficult.

The AAO finds that the medical condition of the applicant's spouse is a substantial hardship factor which, when added to the normal hardships of relocation, rise to the level of extreme hardship.

With regard to hardship upon separation, prior counsel asserts the applicant's spouse would experience physical hardship in addition to the usual hardships of separation. *Brief in Support of Appeal*, received October 20, 2009. He notes that the applicant's spouse has been diagnosed with Mutliple Sclerosis and refers to medical records and resource materials on the disease that have been submitted into the record. The materials on the disease indicate that it can be a debilitating neurological disorder. The applicant's doctors have noted the applicant's spouse's symptoms as discomfort and numbness throughout the right side of his body. *Statement of* [redacted], November 4, 2008. The statement by [redacted] also notes that the symptoms of this disease may come and go, but that over time they will most likely progress to a stage where the applicant's spouse may become incapacitated and require assistance in his daily activities. *Id.* Based on the evidence in the record the AAO finds this to be a significant hardship factor; it will be given due consideration in an overall determination of extreme hardship to the applicant's spouse.

The applicant's spouse has submitted a statement expressing the extreme emotional hardship he would suffer if the applicant were removed. *Statement of the Applicant's Spouse*, December 26, 2008. The record contains a psychological assessment of the applicant's spouse by [redacted] V. In his evaluation the [redacted] notes the emotional impact of the applicant's impending

departure and the psychological impact of his medical condition. He concludes that the applicant's spouse is experiencing increasing levels of anxiety and depression, noting that they will worsen if the applicant is removed. The AAO will give due consideration to Mr. Salhaney's evaluation.

The fact that the applicant's spouse has a disease with potentially debilitating symptoms compounds the emotional impact of the applicant's removal. When the physical and psychological impacts are considered in aggregate, along with the normal impacts of separation, they establish that the applicant's spouse will experience uncommon hardship rising to the level of extreme.

As the applicant has established that a qualifying relative will experience extreme hardship upon both relocation and separation, the AAO may now determine whether she warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's use of another person's passport in an attempt when entering the United States. The favorable factors in this case include the presence of the applicant's spouse, the extreme hardship her spouse would endure if she were removed and the lack of any criminal record during her residence here. The favorable factors

in this case outweigh the negative factors; therefore favorable discretion will be exercised. The Director's decision will withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.