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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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DATE: MAY 0 3 2012 OFFICE: NEWARK 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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 St. Vincent and the Grenadines (St. Vincent) 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 or seeking to procure U.S. admission through fraud or misrepresentation on at least two occasions. The applicant is married to a U.S. citizen and is the beneficiary of an Approved Petition for Alien Relative (Form I-130). The applicant does not contest the inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* August 25, 2010.

In support of the appeal, the applicant's counsel submits a brief contending USCIS misapplied the legal standard for extreme hardship. The record also contains two Applications to Adjust Status or Register Permanent Residence (Form I-485), as well as a prior Form I-601, together with supporting documentation. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> 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.

Section 212(i)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [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 [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 U.S. citizen 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).

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-*

Buenfil v. INS, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record shows that on December 16, 1993, the applicant sought admission to the United States from Canada by presenting a St. Vincent passport belonging to another person, and was denied admission to the United States and returned to Canada.[1] Then, on April 18, 1994, she was inspected and admitted in Puerto Rico using her own passport with a B-2 visa; however, she used her married name on the passport and failed to divulge her refusal of admission to the United States for fraud when she obtained the visa. Further, on July 17, 2005 the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), and on neither this nor a subsequent Form I-485 did the applicant disclose her 1993 attempt to procure admission to the United States using fraudulent documents.

The applicant's husband contends he will suffer emotional and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. The record, however, fails to contain sufficient evidence to establish these claims.

To begin, the record contains little documentation concerning the emotional hardship that counsel and the applicant's husband state he will experience if separated from his wife, other than his own claims. The qualifying relative asserts that he and his wife are attempting to have a child with the assistance of a fertility clinic, as well as exploring the prospects for adoption, so that the applicant's absence would prevent them from having children together. The record does not contain evidence of the couple's fertility treatments or efforts to adopt, but only documentation that they are engaged in foster parenting and that the applicant was identified as a "resource parent." Documentation shows that foster parenting in New Jersey is a temporary care arrangement and the child placements in question were valid for only six months.

The applicant's husband contends that absence of the applicant will damage his ability to care for his 11 year-old child from a prior relationship, but evidence is inconclusive regarding both the nature of the custodial relationship and the impact of the applicant's absence on her husband's ability to maintain it.[2] While hardship to persons other than a qualifying relative is relevant to the extent it represents hardship to a qualifying relative, counsel's claim that his wife's absence will interfere with the qualifying relative's ability to care for both his daughter and his mother is unsubstantiated. The record does not reflect that his mother requires the applicant's ongoing care after a knee replacement, or that the applicant is qualified to render special care. The record does not contain

[1] Although the record contains an *in absentia* exclusion order dated September 1994, other documentation on the record indicates that the applicant was denied admission and was returned to Canada for prosecution on December 17, 1993 and was not present in the United States when she was ordered excluded *in absentia* in September 1994.

[2] The record contains a court order referencing temporary custody and a state children's agency letter stating that the child is under the care of the applicant's husband, but no permanent order granting him custody.

evidence to support the applicant's husband's claim that his wife's departure would cause him emotional hardship beyond the common results of removal or inadmissibility or that he would be unable to visit her overseas to ease the pain of separation.

As for the predicted financial hardship, besides the qualifying relative's statement that the applicant's income helps them meet their financial obligations, there is no evidence that she contributed earnings to the household. Although the record contains a letter of support stating the applicant worked for a family as their children's nanny for seven years up to 2007, the letter fails to mention any wage or salary. The couple's joint tax returns show a childcare business they registered in 2005 losing money for each year reported, and no other documentation has been provided showing the applicant's husband's expenses, assets, or liabilities. The entire income reported on their 2008 joint income tax return reflects the individual earnings of the applicant's husband. Therefore, the record contains insufficient evidence to support the assertion that the applicant contributes financially to the relationship, or that without her physical presence in the United States her husband will experience financial hardship. Nor has it been established that the applicant will be unable to support herself outside the United States, thereby imposing hardship on her husband; rather, the record contains the applicant's claim to have worked for several years in Canada before entering the United States in 1994.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's husband, if he remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. While the applicant's spouse may need to make alternate arrangements with respect to childcare, it has not been established that such planning will cause him any hardship; evidence shows they may already be in place. Based on the evidence provided, the applicant has not met her burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if she is unable to remain here.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the record contains limited evidence of the applicant's husband's situation. The record does establish that his daughter is residing with him after being removed from her mother's custody and his own mother lives nearby. USCIS databases show that the applicant's husband immigrated from Guyana in 1997 on a family-based petition and became a naturalized U.S. citizen in 2005. The record does not indicate that he has any ties to St. Vincent other than through his wife, and there is no evidence that he has ever visited the country. Supporting the applicant's contention regarding reduced earning capacity and poor employment prospects there, counsel submits documentation of high unemployment in St. Vincent and the applicant's husband's record of employment in the United States. Although mere diminution in earnings or the inconvenience of needing to pursue new employment does not constitute hardship that rises to the level of "extreme," documentation establishes that the applicant's husband would likely have difficulty procuring employment, which would interfere with his ability to support his child.

The record reflects that the cumulative effect of the applicant's husband's ties to the United States and absence of ties to his wife's country, his 15 year residence and naturalization in the United States, and his loss of employment, were he to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, a qualifying relative would suffer extreme hardship were he to relocate to St. Vincent to reside with his wife.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.