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U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: MOSCOW, RUSSIA Date: OCT 06 2010
(TASHKENT, UZBEKISTAN)

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uzbekistan. The Acting Field Office Director stated that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 25, 2010.

On appeal, counsel contends that the applicant's spouse will experience emotional hardship from separation from his children, currently residing in Uzbekistan with the applicant, and that he will experience financial hardship from having to support two households.

Section 212(a)(2) of the Act states that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense)
or an attempt or conspiracy to commit such a crime . . . is inadmissible.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude. In evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

The record shows that the applicant was convicted of falsifying her passport in the Supreme Federal Court of the United Arab Emirates, on or about January 15, 2007. The applicant was sentenced to one year imprisonment.

The Supreme Court has held that crimes that involve fraud categorically fall into the definition of crimes involving moral turpitude. *See Jordan v. De George*, 341 U.S. 223, 227 (U.S. 1951) (noting that, without exception, a crime in which fraud is an ingredient involves moral turpitude.); *see also Matter of Flores*, 17 I&N Dec. 225, 229 (BIA 1980) (holding that the respondent's conviction for uttering or selling false or counterfeit paper relating to registry of aliens was a CIMT although intent to defraud was not an element of the crime). The BIA noted that it had previously "held that the government need not have been cheated out of money or property in order for the crime to involve moral turpitude" as it is "enough to impair or obstruct an important function of a department of the government by defeating its efficiency or destroying the value of its operations by deceit, graft, trickery, or dishonest means." *Id.* The BIA later clarified its holding in *Matter of Flores*, finding that "knowledge that [an] immigration document was altered . . . is not necessarily equated with the intention to use the document to defraud the United States Government." *Matter of Serna*, 20 I&N Dec. 579, 585 (BIA 1992). Thus, mere "possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude." *Id.* at 586.

In this case the disposition submitted into the record clearly indicates that the applicant altered her passport in order to conceal an illegal stay in the United Arab Emirates. Therefore, the Field Office Director's conclusion that she has been convicted of a crime involving moral turpitude was reasonable. The applicant has not contested this finding.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . . .

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

A waiver of inadmissibility under section 212(h) 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, parent, son or daughter 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-Morales*, 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.

The record includes, but is not limited to: statements from counsel; court records relating to the applicant's conviction; statements from the applicant's spouse; statements from family members of the applicant and her spouse; a letter of employment from [REDACTED]; medical records pertaining to the applicant's pregnancy; country conditions materials on [REDACTED], including a travel warning from the U.S. Department of State, Bureau of Consular Affairs, dated July 3, 2008.

With regard to hardship upon relocation, counsel for the applicant asserts that the environment in Uzbekistan is such that the applicant will experience hardship. Counsel states that the language barrier, economic conditions, medical conditions, and sanitary conditions would result in hardships to the applicant's spouse. Counsel also notes that the applicant's spouse's relocation would "bring financial devastation" and the applicant's spouse would be unable to find a job. He further asserts that the applicant's children will suffer because of the lack of adequate medical facilities in [REDACTED]

The applicant's spouse asserts that if he relocated to Uzbekistan it would be difficult for him to find employment to support his family. He notes that he does not speak Uzbek.

The record contains statements from a number of family members asserting that it would be a hardship for the applicant's spouse to relocate to Uzbekistan because he does not speak Uzbek. There are also country conditions materials in the record which detail the socio-economic and political conditions in Uzbekistan. After an examination of this evidence the AAO does not find that the hardships asserted rise to the level of extreme hardship.

The applicant has not submitted evidence to demonstrate that her children are U.S. citizens, and as such, they will not be considered qualifying relatives in these proceedings.

The AAO acknowledges that there would be some cultural adjustment for the applicant's spouse should he relocate. However, there is insufficient evidence that the cultural readjustment would rise above the norm, and as such this does not constitute a significant hardship factor. The AAO also recognizes that Uzbekistan will not have the same level of quality of life as the United States, and has a less developed medical infrastructure. The AAO notes the conditions discussed in the most recent U.S. Department of State Travel Warning for U.S. citizens in Uzbekistan, issued July 22, 2010, urging U.S. citizens to exercise caution when travelling in the region due to potential terrorist activity. However, the record does not indicate that the conditions in Uzbekistan are such that it would represent an extreme departure in quality of life for the applicant's spouse.

When the hardship factors associated with relocation, including country conditions, lack of family ties and cultural readjustment, are considered in the aggregate, the AAO finds that the evidence in the record fails to establish that they rise above those normally experienced by the relatives of inadmissible aliens who relocate abroad, and as such, do not constitute extreme hardship.

With regard to hardship upon separation, counsel has asserted that the conditions in Uzbekistan will impact the applicant and her children, resulting in emotional hardship to the applicant's spouse. He

has also asserted that the applicant's spouse, despite making \$65,000 annually, will experience extreme hardship from having to support two households, and that it is a hardship for his family to care for his property while he is away on business or visiting the applicant in Uzbekistan.

Hardship to the applicant is not directly relevant to a determination of hardship, and in this case the materials submitted are not sufficiently probative to reach a determination that hardships on the applicant – due to the conditions in Uzbekistan - would indirectly result in an extreme hardship on the applicant's spouse.

The record does not contain sufficient documentation to support counsel's assertion. There is no evidence which pertains to the cost of living in Uzbekistan, the financial obligations of the applicant and their children, or the applicant's spouse's cost of living or monthly financial obligations. There is no evidence that the applicant's family has missed work in order to care for his property as has been asserted, or that they have used their money to cover the applicant's bills. While there are statements from family members asserting the applicant's spouse is experiencing extreme hardship, the AAO must make an objective determination of hardship, and in this case the record lacks sufficient probative documentation to establish that the impacts on the applicant's spouse rise above those commonly associated with the inadmissibility of a family member. As the testimony in the record indicates, the impacts on the applicant's spouse are mitigated to some degree by the presence of other family members to assist him.

When the impacts asserted are considered in their totality, the AAO does not find that they rise above the common impacts associated with the inadmissibility of a spouse, and as such do not constitute extreme hardship.

The record, reviewed in its entirety and in light of the factors, cited above, does not support a finding that the applicant's husband would face extreme hardship if the applicant is refused admission. The AAO recognizes there would be some cultural adjustment if the applicant's spouse relocated, and that separation from the applicant and his children will impact the applicant's spouse emotionally. However, 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. In the present case, the record fails to distinguish the hardship that would be experienced by the applicant's spouse from that suffered by other individuals whose spouses have been found to be inadmissible to the United States. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.