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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H5

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 17 2010**

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 \$585. 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,

[REDACTED]

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter was appealed to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. In denying the waiver application, the AAO found that the record failed to establish that the applicant's wife (his qualifying relative) would experience extreme hardship if the waiver application were denied. The applicant filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Eastern District of New York. Pursuant to a court settlement, the AAO withdrew its prior decision, reopened the appeal and provided the applicant with time to submit additional evidence, which has been received by the AAO. The appeal will be sustained.

The applicant is a native and citizen of Macedonia who was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601).

Counsel contends in the letter dated July 21, 2010 that the applicant's wife will have financial difficulties if she remains in the United States without her husband and if she joins him to live in Macedonia. He asserts that the applicant's wife sustained physical injuries due to a motor vehicle accident that occurred on October 8, 2009, that she was unable to work for five months on account of those injuries, and that she requires surgery on her right shoulder and back. He asserts that it might be physically impossible for her to leave the United States, and that she might be unable to work for a long time or might be permanently unable to return to her job, which she has held for 18 years. Counsel declares that the applicant and his wife have financially supported the applicant's family members in Macedonia and will not be able to continue to support them if the applicant returned to Macedonia. Counsel maintains that the applicant's son might not be able to receive treatment for his skin condition in Macedonia.

The applicant seeks a waiver of inadmissibility under section 212(i) of the Act. 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 children 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 U.S. Citizenship and Immigration Services (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 [REDACTED] 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." [REDACTED] 10 I&N Dec. 448, 451 (BIA 1964). In [REDACTED], 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.

and (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 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. 224 F.3d 1076, 1082 (9th Cir. 2000)* as 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 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.

With regard to remaining in the United States without her husband, the applicant's spouse stated in her affidavit dated July 16, 2010, that her husband's return to [REDACTED] would emotionally and financially impact her and her two children, who are now nine and eight years old. She stated that she has been employed with [REDACTED] for nearly 18 years and is responsible for cleaning an office, and her cleaning job might be in jeopardy because of her back and shoulder injuries. She conveyed that she was out of work for five months after the motor vehicle accident and that her income will be further reduced because she will have shoulder surgery on July 21, 2010, and back surgery in the near future. [REDACTED] who is being treated for [REDACTED] and may require also psychotherapy because of the disease. The applicant's spouse conveyed that she and her husband have supported her husband's family members since 2000, and that they will not be able to continue supporting them if he relocated to Macedonia because there is little likelihood that he will find suitable employment on account of Macedonia's poor economy. The applicant submitted medical records, information about pityriasis rubra pilaris, a police accident report, and Western Union money transfers sent to the applicant's family members in Macedonia from 2005 to April 2010. The letter by the orthopedic surgeon dated July 10, 2010, indicated that the applicant's wife will undergo surgery on her right shoulder on July 21, 2010, and will require back surgery for two herniated discs. Her physician's letter dated May 7, 2010 conveyed that the applicant's wife was concerned about losing her job if restricted to light-duty work. We note that the applicant's wife's affidavit dated April 4, 2006 reflects that the applicant is employed with a construction and demolition company and earns \$30,000 a year, and his wife earns \$40,000 per year with Harvard Cleaning Services.

The hardship factors asserted in the instant case are the emotional and financial impact to the applicant's wife as a result of separation from her husband. We find that the record indicates that on account of her shoulder and back injuries the applicant's wife there is a significant likelihood that she will no longer be able to perform the duties of her cleaning job and would therefore require the financial support of her husband. Furthermore, the applicant's wife contends that she is concerned about the impact of separation from the applicant on their minor children and the need of her son to attend therapy due to his skin disease. Substantial weight is given to this type of family separation in the hardship analysis. Thus, in view of the financial and emotional hardships that the record reflects that the applicant's wife will experience if she remains in the United States without the support of her husband, we find the applicant has demonstrated that the hardship that his wife will experience as a result of separation is extreme.

Regarding the hardships associated with joining the applicant to live in Macedonia, the applicant's wife stated in her affidavit dated July 16, 2010, that the AAO has already recognized that her relocation to Macedonia would result in extreme hardship. In addition, she states that her physical injuries, upcoming surgeries, and anticipated loss of income make relocation even harder. We note that the applicant's wife stated in her affidavit dated April 4, 2006 that she and her parents and two sisters came to the United States in 1985 and were granted political asylum here. The applicant's indicated that her sisters and the family members of her sisters, and her parents and grandmother all live in the same house, a house that is owned by her parents, and that she and her husband and their children also live in that house. The applicant's wife asserted that she will lose her job, income, and health insurance if she relocated to Macedonia, and her husband will lose his job and income as well. She contends that she will be returning to the country from which she was granted political asylum, that she will have no home in Macedonia and will lose the support of her family members, and will

have no reason to believe that they will find employment comparable to what they now have.

The asserted hardship factors are separation from her parents, grandparent, and her sisters and their family members; not being able to obtain comparable employment to what she and her husband now have, particularly because of physical injuries that will limit her ability to obtain employment; not being able to financially support the applicant's family members who live in Macedonia, having to return to the country from which she fled and was granted political asylum, and concern about obtaining medical care for her son's skin disease. When the submitted evidence and all of the hardship factors are considered collectively, we find they demonstrate extreme hardship to the applicant's wife if she relocated to Macedonia with her husband.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. The AAO must then, "[B]alance 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 adverse factors in the present case are the applicant's gaining admission into the United States through misrepresentation and any unauthorized employment. The favorable factor in the present case is the extreme hardship to the applicant's spouse and children. The AAO finds that the immigration violation committed by the applicant is serious in nature; nevertheless, we find the favorable factor in the present case outweighs the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.