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



**U.S. Citizenship  
and Immigration  
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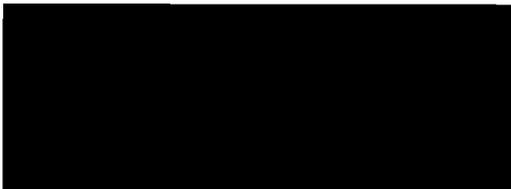
#5

FILE: [REDACTED] Office: BANGKOK, THAILAND Date: DEC 02 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:



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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tariq Syed*

for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Taiwan 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 benefits under the Act through fraud or willful misrepresentation. She is the wife of a U.S. citizen and has three U.S. citizen sons. 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 District 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 8, 2008.

On appeal, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is found to be inadmissible to the United States. *Brief in support of appeal*, December 13, 2008.

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 attempted to obtain a re-entry permit in 1992 and 1998 by representing herself on the Form I-131 as a permanent or conditional resident of the United States, and thus attempted to procure benefits under the Act by willful misrepresentation. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following relevant evidence: a brief from counsel; statements from the applicant, the applicant's spouse and the applicant's sons; prescription forms from the office of [REDACTED] psychiatry; a psychological evaluation of the applicant's spouse from [REDACTED] Ph.D., clinical psychologist; copies of documents produced through a Freedom of Information Act request; photographs of the applicant and her spouse, as well as her sons and their families; a statement from [REDACTED] D.C.; medical documents from Taipei Hospital related to the applicant's spouse's back problems.

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 or her children 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 1419, 1422 (9<sup>th</sup> Cir. 1987).

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.

Prior to examining the record for evidence of extreme hardship the AAO will address counsel’s inference that the applicant was defrauded by a previous lawyer. Counsel makes a general reference to the prior counsel’s list of disciplinary actions with the California State Bar Association, but does not specifically articulate how or why prior counsel is implicated in the applicant’s fraudulent attempt to procure immigration benefits. As such, counsel’s assertions are not persuasive and will not be accorded any weight in this proceeding or on any other matter that is relevant to present proceedings.

With regard to hardship upon relocation, counsel for the applicant asserts that the applicant’s spouse would be unable to relocate to Taiwan because he would lose his lawful permanent residence status, because there would be inadequate medical facilities to treat his mental health condition and because he would have to sever his family ties in the United States. *Brief in support of appeal*, December 13, 2008. Counsel further asserts that the applicant and her spouse do not have adequate retirement savings and that, due to their age, would not be able to survive in Taiwan. Counsel explains that the applicant’s three sons reside in the United States and specifically refers to the psychological

evaluation by [REDACTED] stating that the applicant's spouse should not return to Taiwan to visit his wife while he is undergoing therapy in the United States.

The record does not contain sufficient evidence to support counsel's assertions of inadequate medical facilities in Taiwan. There is no documentation that the applicant's spouse would be unable to receive medical treatment for his physical problems, and in fact the record contains medical records from a hospital in Taipei regarding the applicant's spouse's back problems. In addition, the record lacks sufficient documentation of the applicant and her spouse's financial resources to establish that the applicant's spouse would experience financial hardship if he relocated to Taiwan. The AAO also notes that the applicant's three sons are all of working age and employed in the United States. They have expressed that it is their moral obligation to take care of their parents, and assertions regarding their salaries indicate that they would be able to support their parents financially in retirement.

[REDACTED] recommends that the applicant's spouse not travel abroad while he is undergoing therapy in the United States and asserts the applicant's spouse has a past history of depression due to separation from his sons and suffers from severe back pain. The record does not include documentary evidence of the applicant's spouse's past history of depression while in Taiwan.

Counsel asserts that the applicant cannot remain in Taiwan for too long or he will lose his lawful permanent residence. The AAO recognizes this as a hardship, and will factor this into an overall determination of extreme hardship to the applicant's spouse.

When examined in an aggregate context, the hardship factors asserted upon relocation, based on the evidence in the record as it is currently constituted, are not sufficient to establish extreme hardship upon relocation.

With regard to hardship upon separation, if the applicant's spouse were to remain in the United States, counsel for the applicant asserts the applicant's spouse is experiencing emotional and physical hardship. He asserts that the applicant's spouse has been diagnosed with Major Depressive Disorder and Severe Degenerative Disc Disease of the lower lumbar. He explains that the applicant's physical back pain impacts his ability to function on a daily basis.

The record contains medical records from the applicant's spouse's psychiatrist, medical records related to his back condition, a psychological evaluation from [REDACTED] and statements from the applicant's sons. In his evaluation [REDACTED] narrates the applicant's spouse's emotional distress due to separation from the applicant and indicates that the applicant's spouse asserts that his physical pain has been so bad he has had suicidal ideation. *Psychological evaluation of the applicant's spouse*, October 7, 2008. He notes that the applicant's spouse's back condition adds additional stress, as he is 60 years old and needs assistance to cope with the pain generated by his condition. [REDACTED] concludes that the applicant's spouse has Major Depressive Disorder. The statements from the applicant's three sons all indicate that the applicant's spouse, their father, is experiencing emotional hardship due to the separation from his wife of 35 years, the applicant.

The record contains medical documents related to the applicant's spouse's back problems, including a letter, x-rays and corroborating statements from family members and psychologist. A letter from the applicant's spouse's chiropractor indicates that he has had little success in treating the applicant's spouse's back pain. *Statement of* [REDACTED] May 10, 2008. [REDACTED] also indicates that the presence of the applicant's spouse would help alleviate the impacts of his physical condition. *Id.* A prescription notice from [REDACTED] the applicant's spouse's psychiatrist, indicates the applicant's spouse is on Lexapro for his depression and Ambien to help him sleep at night. *Prescription forms*, undated. The applicant's spouse has submitted a statement indicating that the medication he takes for his back causes other physical problems such as constipation and insomnia. *Statement of the applicant's spouse*, October 14, 2008. The applicant's spouse also asserts that his back condition makes it extremely uncomfortable for him to travel the long distance to Taiwan to visit his wife, that she assists him by with massages and topical treatments and that he would be physically and emotionally devastated if he had to live without her. *Id.*

Although the medical documentation of the applicant's spouse's spine condition is not extensive, when considered in conjunction with other evidence in the record it is sufficient to establish that he has a painful physical condition. The presence of his spouse, the applicant, would help reduce the impact his physical condition causes on his daily activities.

When viewed in the aggregate, the hardship factors in this case, the emotional hardship of the applicant's spouse, his physical hardship resulting from a spine condition, rise above the impacts commonly associated with separation from an inadmissible family member, and as such, constitutes extreme hardship upon remaining in the United States.

However, the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission. The record does not establish extreme hardship if he were to relocate to Taiwan in order to reside with her. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.