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

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[redacted]

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FILE: [redacted] Office: LATHAM, NEW YORK Date: DEC 15 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 $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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Latham, New York, 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 Guyana 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 admission to the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband and Legal Permanent Resident children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated February 5, 2008.

On appeal, the applicant through counsel asserts that the Field Office Director erred in denying the applicant's waiver application in that the applicant's spouse will suffer extreme hardship as a result of the denial of the waiver application. *Form I-290B and accompanying Letter from Counsel*, dated April 17, 2008.

The record includes, but is not limited to, a letter from counsel in support of the appeal, affidavits from the applicant and her husband, dated April 11, 2008, a letter from [redacted] dated February 22, 2008, copies of W-2 Wage and Tax Statements for 2007 for the applicant and copies of Earnings Statements for the applicant and her husband for 2008, copies of receipts or cost estimates in the applicant's name for prescriptions from [redacted] copies of health insurance cards for the applicant and her husband, a copy of a letter from the Social Security Administration addressed to the applicant, dated December 19, 2007, indicating the applicant's estimated taxable earnings per year after 2006 as $20,273, and supportive letters from friends including their [redacted]
The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (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 Act is inadmissible.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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...

In the present case, the applicant claimed the following at her interview on December 28, 2005: that she paid a smuggler $15,000 to smuggle her into the United States, that she was issued a Guyanese passport with no visa in it, that on or about December 15, 2000, she presented herself with the smuggler to a legacy Immigration and Naturalization Service (INS) Immigration Inspector at Miami, Florida, for admission into the United States, and that the smuggler did all the talking to the Inspector. The record includes Guyanese passport [redacted] issued to the applicant on March 24, 1999, which the applicant claims she used to enter the United States. The passport has no U.S. visa in it and no admission stamp as evidence that she was admitted into the United States on December 15, 2000. The applicant has failed to establish that she was inspected and admitted into the United States with validly issued documentation in her name. Thus, the AAO finds that the applicant procured entry into the United States by fraud or the willful misrepresentation of a material fact, and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute the applicant's inadmissibility. On March 23, 2001, the applicant married her husband, a citizen of the United States, in Kew Gardens, New York. On April 14, 2001, the applicant's husband filed a Form I-130 on the applicant's behalf. The Form I-130 was approved on September 28, 2004. On August 28, 2005, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485), and on January 30, 2006, the applicant filed a Form I-601. In two separate decisions dated February 5, 2008, the Field Office Director denied the Form I-485 and the Form I-601, finding that the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to her spouse.

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 husband 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 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 reflects that the applicant's husband is a 43-year-old native of Guyana and citizen of the United States. The applicant and her husband were married in New York City on March 23, 2001, and they have two children. The applicant's husband asserts that he is suffering extreme emotional and financial hardships as a result of the denial of the applicant's waiver application.

Regarding the emotional hardship of separation, the applicant's husband states that he needs the applicant to help care for their children, particularly their older son, Ferose. The applicant's husband states that [redacted] suffers from diabetes and from extreme attention deficit, that he needs to be supervised by the applicant constantly, that he cannot help with the supervision of [redacted] because of his work schedule, that the applicant has obtained a flexible work schedule so that she can be home with [redacted] and that without the applicant, he would be forced to ask the state to take care of [redacted] because he would not be able to take care of him and work. *Affidavit by* [redacted] dated April 11, 2008. The applicant also states that he is concerned about the applicant's health condition, that she has a brain tumor in the front of her cranium for which she must take daily medication, that the tumor affects her eyesight, and without medication, the tumor will grow. *Id.* The record includes supportive letters from friends attesting to the applicant's relationship with her family. The letter from [redacted] the [redacted] New York, dated January 25, 2006, states that it will be a tragic decision for the applicant to leave the United States for an indefinite period because "culturally, [the applicant] is primarily the action person in the lives of the two children, she takes care of them and the [applicant's husband] will be devastated and broken."

Regarding the financial hardship of separation, the applicant's husband states that without the applicant's income, he would not be able to pay the mortgage, other bills and living expenses, and they would lose their home and all the equity in it. *Affidavit by* [redacted] dated April 11, 2008. The applicant's husband states that the applicant's medications cost over $50 a month, that her medications are covered by a prescription plan here in the United States, however, if the applicant is removed from the United States to Guyana, she will lose this coverage and he cannot afford to pay for either her medical care or her medications in Guyana, and that without the medications, the tumor will grow and will cause her death. *Id.* The applicant's husband also states that the applicant's medical condition has to be monitored constantly through MRI testing, which is "prohibitively expensive to pay for without insurance." *Id.* The applicant states that her return to Guyana will cause extreme hardship to her family. The applicant states that she has a serious medical condition, which if left untreated will result in her death, that her medical care and medications are covered by their health insurance, that she will lose the health coverage if she returned to Guyana and that her husband cannot afford to pay for her treatment and medication in Guyana. *Affidavit by* [redacted] dated April 11, 2008. The applicant also states that her husband cannot support their family or pay their bills without her financial contribution. *Id.*

The record includes a letter from [redacted] Schenectady, New York, dated February 22, 2008. [redacted] states that the applicant receives medical care from their office, that her medical history includes the following chronic problems: noninsulin-independent diabetes mellitus, hypothyroidism, and amenorrhea, and that she was recently diagnosed with a prolactinoma, which is tumor of the brain. [redacted] further states that for the diagnosis, the applicant requires consistent and close follow-up in order to ensure proper medical management, and that treatment includes several prescription medications, routine laboratory workup, and possibly regular MRI scans of

her brain to evaluate growth of the tumor. The record also includes four copies of receipts or cost estimates for prescriptions from [redacted] Schenectady, New York, all dated March 3, 2008, copies of the applicant's W-2 Wage and Tax Statements for 2007, and the applicant's and her husband's Earnings Statements for January and February 2008, respectively.

While the AAO acknowledges the claims made by the applicant's husband, it does not find the evidence in the record is sufficient to demonstrate that the challenges encountered by the applicant's husband, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's husband's affidavit, the record does not contain medical records, detailed testimony, or other evidence to show that the emotional hardships he faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. The AAO notes that hardships the applicant or her son face as a result of separation is a relevant factor in assessing extreme hardship. The record does not contain any medical documentation to show that the applicant's son, Ferose, has a severe medical condition that requires constant supervision by the applicant and that her inability to provide such care, will result in extreme hardship to the applicant's husband. The brief letter from [redacted] regarding the applicant, lists the medical problems the applicant has, but does not provide detailed assessment of the severity of the medical conditions, information on treatment provided or any family assistance needed. Without such details, the AAO is not in the position to reach conclusions concerning the severity of any medical condition or the treatment needed. Although the applicant claims financial hardship to her family as a result of separation, the record does not contain information about the family's current income or the family's expenses. Without such documentation, the AAO cannot make a determination that the applicant's husband will suffer extreme financial hardship as a result of separation. Thus, the AAO finds that the applicant has failed to establish that the challenges her husband faces will result in extreme hardship.

Regarding relocation, the applicant's husband states that he cannot relocate to Guyana with the applicant for the following reasons: the terrible living conditions in the country, reports of violence in the country and the government doing nothing to stop the violence, he cannot afford to send his younger son to school in Guyana because of the violence, there are no schools or programs for children with disabilities to address Ferose's problems, that he would only earn $200 a month and cannot support his family with such income, and he does not have family there to help them. *Affidavit by* [redacted] dated April 11, 2008.

While the AAO acknowledges the claims by the applicant's husband, it does not find the evidence in the record to support them. The record does not contain country condition reports on Guyana to demonstrate that the applicant's husband would not be able to obtain employment that will pay him enough to take care of his family. The record reflects that the applicant's husband is a native of Guyana who resided in Guyana during his formative years. He has not adequately addressed any family ties he has in Guyana that could help him adjust to life upon relocation. While the news articles on Guyana the applicant's spouse provides give a general overview of conditions in the country, they do not demonstrate that the applicant's husband would be targeted by criminals there or that he would be subjected to violence or other forms of abuse in the country. Additionally, the AAO notes that other than the statement from the applicant's husband, the record does not include any evidence of financial, health or other types of hardships that the applicant's husband would experience if he relocated to Guyana with the applicant.

Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship upon relocation to Guyana.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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.