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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
Services

H/S

FILE:

Office: PORTLAND, OREGON

Date: **DEC 22 2010**

IN RE:

Applicant:

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:

SELF-REPRESENTED

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.

Thank you,

Tariq Syed
for

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico 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 through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the daughter of a United States citizen and a lawful permanent resident of the United States, and the mother of a United States citizen. She 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 parents and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 16, 2008.

On appeal, the applicant apologizes for her misrepresentation and states all she was trying to do was make a "better life here in the United States of America." *Form I-290B*, filed July 29, 2008.

The record includes, but is not limited to, previous counsel's brief; affidavits from the applicant, her mother, and her father; letters of support for the applicant; medical documents for the applicant's parents; a mental health evaluation for the applicant's parents; insurance documents, tax documents, mortgage documents, and pay stubs; articles on health care in Mexico, treatment of hypertension and diabetes in Mexico, and poverty in Mexico; and a background note on Mexico. 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.
- (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 record indicates that in or around August 1997, the applicant misrepresented that she was married on her nonimmigrant visa application. Based on the applicant's misrepresentation, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant does not dispute this finding.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Service (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 (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." *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 first prong of the analysis addresses hardship to the applicant’s parents if they relocate to Mexico. In a mental health evaluation dated November 28, 2007, licensed social worker [REDACTED] reports that the applicant’s parents indicated that they do “not want to go to Mexico to live. They said life would be very difficult for them in Mexico.” In an affidavit dated December 5, 2007, the applicant’s father states he “cannot imagine returning to Mexico.” He also states that he would have a hard time finding a job in Mexico. The applicant’s father claims that if they went to Mexico with the applicant, “they would lose [their] home and [his] medical insurance, and also the other family that [they] have in the United States.” In an affidavit dated December 5, 2007, the applicant states her father receives medical insurance through his employment. The AAO notes that the record also establishes that the applicant’s father receives government-sponsored Medicare. The applicant claims that in Mexico, “[her] father would have to pay much higher medical costs, because he would not be insured.” The applicant states she has two sisters residing in Mexico, but they cannot help care for their parents because “they do not earn enough income to support two additional people.” In an affidavit dated December 5, 2007, the applicant’s mother states that if they joined the applicant in Mexico, she does not know where they would live, how they would afford their medications, and she would lose her lawful permanent residency in the United States. The AAO notes that the record establishes that the applicant’s mother was diagnosed with diabetes, lumbalgia, hypothyroidism, hypercholesterolemia, and knee and back pain; and the applicant’s father was diagnosed

with diabetes, hypertension, and high blood pressure. Additionally, the AAO notes that the applicant submitted various articles regarding health care in Mexico and the treatment of hypertension and diabetes in Mexico. In counsel's brief dated December 6, 2007, previous counsel claims that "due to the lack of adequate and affordable medical care in Mexico, it is quite likely [the applicant's mother] would not be able to access or afford the medicine and care that she requires." [REDACTED] reports that the applicant's parents claim "a move back to Mexico would be very hard on their health, and they would suffer constant stress and worry." Previous counsel claims that "[m]oving to Mexico would likely diminish not only [the applicant's parents'] quality of life, but also their life expectancy." The AAO notes the claims made by counsel and the applicant's parents regarding the difficulties they would face in relocating to Mexico.

The AAO acknowledges that the applicant's parents have resided in the United States for many years. Based on the age of the applicant's parents, the emotional hardship of being separated from their family, losing their health insurance, their medical issues, the applicant's father leaving his employment in the United States, and the applicant's mother losing her lawful permanent residency status, the AAO finds that the applicant's parents would suffer extreme hardship if they were to relocate to Mexico to be with the applicant.

Regarding the hardship the applicant's parents would suffer if they were to remain in the United States without the applicant, [REDACTED] reports that the applicant is her parents "primary caretaker as they both have serious medical conditions. She pays the bills, supplements their very minimal income with her work, and runs the errands for all of them." The applicant states "[b]oth of [her] parents suffer from serious health conditions and [she] [is] their primary caretaker." She states that both of her parents have diabetes and her mother has lumbalgia, "which causes her chronic back pain." The applicant's mother states she has "back pain continually and [she] find[s] it painful to walk. [She] physically lean[s] on [the applicant] when walking." The applicant states her father is losing his eyesight, she makes sure her parents take all their medications everyday, and she translates for them because they do not speak English. In letters dated September 18, 2007, a staff physician at Natural Health Center diagnosed the applicant's mother with diabetes and lumbalgia, and the applicant's father with diabetes. The AAO notes that no medical documentation was submitted establishing that the applicant's father is losing his eyesight. The staff physician indicated that the applicant's parents need "continued care at home that can be provided by [the applicant]." In a statement dated December 6, 2007, [REDACTED] states the applicant's father was only seen in their office one time for hypertension. [REDACTED] also states that the applicant's mother has hypothyroidism, hypercholesterolemia, and knee and back pain.

[REDACTED] states the applicant's parents "both expressed a great deal of worry and fear about what will happen to them if [the applicant] has to leave the United States. They stated they depend on [the applicant] greatly." [REDACTED] states the applicant's parents are demonstrating symptoms of depression. She states the applicant's father has lost his appetite and he does not sleep well, and the applicant's mother has insomnia, loss of appetite, she feels anxious, and she cries easily. [REDACTED] claims that "it is more than likely that if [the applicant] has to leave, the symptoms for both of them will only worsen." She diagnosed the applicant's parents with adjustment disorder with mixed anxiety and depressed mood. The applicant claims that she worries that without her care, her "parents will suffer emotionally and physically." The applicant's father states that without the applicant, he and his wife "could not survive."

Previous counsel states the applicant supplements her parents' income with her income. The applicant states that she and her mother sew to bring in extra income into the household, and her father receives social security. The AAO notes that the applicant's father reported \$10,680 in income in 2006.

The AAO finds that when the applicant's parents' emotional, financial and medical issues are considered in combination with the normal hardships that result from separation of a loved one, the applicant has established that her parents would experience extreme hardship if they remained in the United States in her absence.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's misrepresentation, and periods of unauthorized employment and stay. The favorable and mitigating factors are the applicant's United States citizen father, lawful permanent resident mother, and United States citizen child; the extreme hardship to her parents if she were refused admission, the absence of a criminal record, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh 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 remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.