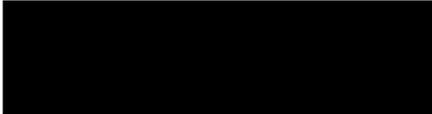


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



#5

FILE: [REDACTED] Office: PORTLAND, OREGON

Date: DEC 27 2010

IN RE: [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 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, Portland, Oregon. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who entered the United States without inspection in February of 1997. She has been found to be inadmissible to the United States 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and her husband, a Legal Permanent Resident, is her petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated August 7, 2008.

On appeal, the applicant's attorney provided a letter and a mental health evaluation of the applicant. In his letter, the applicant's attorney indicated that the applicant has two qualifying relatives, the second qualifying relative being her U.S. citizen son. The attorney further asserted that the U.S. son was not considered in the hardship analysis. Prior counsel, in her letter accompanying the Application for Waiver of Grounds of Inadmissibility (Form I-601), contended that the qualifying spouse would face financial hardships were he to return to Mexico, due to the high unemployment and other economic difficulties facing the country. She also asserted that the qualifying relative and his son's "quality of life would suffer" should they relocate to Mexico. The letter also indicates that the qualifying relative has health and safety concerns for his family if they were to live in Mexico.

The record contains the following evidence; Form I-601, the Notice of Appeal (Form I-290B), letters from the applicant's current and former attorney, a mental health assessment of the applicant, declarations from the applicant, a marriage certificate, a birth certificate of the applicant and qualifying spouse's child, a picture of the applicant with her family, a letter from the applicant's church, country condition materials, a copy of the qualifying relative's permanent resident card, Form I-130, a death certificate for the applicant's first husband and an Application to Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with that application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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.

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. The applicant's husband is the only qualifying relative in this case.¹ 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).

¹ The applicant's child is not statutorily eligible to be a qualifying relative, as claimed by the applicant's attorney, under section 212(i).

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 the Phillipines, 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.

In the present case, the record reflects that, on January 16, 1997, the applicant attempted to enter the United States by using a fraudulent border crossing card. Upon her arrest, the applicant provided her correct name with a different birth date. She was thereafter detained until January 23, 1997, when she departed the United States voluntarily. During the applicant’s November 20, 2007 adjustment of status interview, she was specifically asked whether she had been arrested, cited or otherwise detailed by any law enforcement officers, including immigration authorities. The applicant denied any such arrest or detention and also denied using an incorrect birth date.

The applicant’s former attorney denied the applicant’s inadmissibility, contending that the applicant immediately confessed that the card did not belong to her. Her attorney also asserted that the misrepresentation was not material because the “information was already available to CIS” and the applicant was allowed to withdraw her admission. In the applicant’s own

declaration, dated April 28, 2008, she indicates that she provided the fraudulent card to an immigration official and was told to wait in another location. The applicant states that she told the truth to the official when he reappeared, which she said was several hours later. For an immediate retraction, the applicant would have had to tell the initial immigration official when she provided the border crossing card to him. Moreover, the fact that the applicant used a fraudulent identification card directly relates to her admissibility and is material. It is irrelevant whether the government was aware of her use of a fraudulent identification or whether the government allowed her to withdraw her admission.

Moreover, the applicant's attorney conceded that the applicant stated that she had not been arrested or detained. She claims that the applicant was unaware she was detained because of the comfort level of the facility and that the question itself was difficult for her to understand. However, we agree with the director's decision, which stated that it is not reasonable to believe that the applicant did not realize she was detained when she was held for seven days. Further, the director also noted that the interview questions were translated into the Spanish language by the applicant's attorney and therefore the applicant should not have had any comprehension difficulties. We therefore find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter to the United States through fraud or misrepresentation.

The applicant's qualifying relative is her husband, and as aforementioned, the Form I-130 has already been approved.

The evidence provided which specifically relates to the applicant's hardship includes Form I-601, Form I-290B, letters from the applicant's current and former attorneys, a mental health assessment of the applicant, declarations from the applicant, a letter from the applicant's church, country condition materials and Form I-485, as well as the accompanying materials submitted in conjunction with that application. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney provided a letter and a mental health evaluation of the applicant in support of the applicant's appeal. Prior counsel, in her letter accompanying Form I-601, contended that the qualifying spouse would face financial hardships were he to return to Mexico, due to the high unemployment and other economic difficulties facing the country. She also asserted that the qualifying relative and his son's "quality of life would suffer" should they relocate to Mexico. The letter also indicates that the qualifying relative has health and safety concerns for his family if they were to live in Mexico.

Although the qualifying spouse's separation from the applicant may cause him various hardships, there is very little evidence in the record to demonstrate the hardships that he may encounter if he stays in the United States without the applicant. The record fails to assert any specific hardships that the applicant's spouse would face should the applicant have to return to Mexico due to her inadmissibility. Rather, the record focuses mostly on the hardships facing the applicant herself, and her children. As discussed above, the hardship to the applicant herself and her children are not relevant in the hardship analysis. Further, the mental health assessment indicates that the applicant's spouse was in prison for drug charges, as of September 28, 2008. If the applicant's

spouse is still in prison, any hardships that he would face due to his separation from the applicant would be limited, as he would be unable to contribute financially, emotionally or otherwise if he were in prison. Nonetheless, even if the applicant's spouse is no longer in prison, the record fails to specify and/or support any hardships that the applicant's spouse would experience if he were to remain in the United States without the applicant.

The AAO likewise finds that the applicant has not met her burden in showing that her spouse would suffer extreme hardship if he relocated to Mexico. Although the applicant's former counsel contends that the applicant would face financial hardships if he were to return to Mexico and provides country condition information as to the economic state of the country, the applicant failed to submit detailed evidence concerning the nature of the qualifying spouse's current employment or his potential available employment opportunities in Mexico in his field. Moreover, the record does not contain any information verifying the qualifying spouse's employment and/or income in the United States order to demonstrate that he would face a financial hardship by losing his employment or by not being able to earn a comparable income. The applicant's former counsel also asserted that the qualifying relative's "quality of life would suffer." However, based on the assertions made by counsel and the limited evidence provided, it is unclear from the record whether the decrease in the qualifying spouse's quality of life rises to the level of extreme. Moreover, the applicant's former attorney claims that more than half of Mexicans are uninsured and provided country condition materials to indicate the same. However, the record contains no evidence to show that the applicant's spouse is currently insured in the United States. Moreover, there is also no evidence that the applicant's spouse has any significant health conditions that would require medical attention in the United States.

Lastly, former counsel indicates that the qualifying spouse also has safety concerns for himself and his son, should he relocate to Mexico. However, while the record includes general country condition documentation regarding unsafe conditions, it has not been shown that the location where the applicant and her spouse would likely reside is unsafe.

Further, while the mental health assessment for the applicant provides insight into the potential hardships that the applicant and her children would face if they were to relocate to Mexico, these hardships are only relevant to the extent that the qualifying spouse is impacted by such hardships. However, the record is silent regarding how the qualifying spouse is affected by the hardships of the applicant and their son. Accordingly, the record does not show that relocation to Mexico would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

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.