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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
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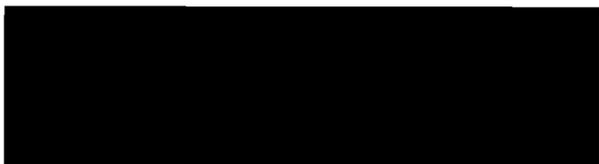
FILE:  Office: LOS ANGELES, CALIFORNIA

Date: **NOV 09 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:

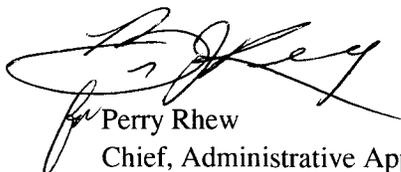


INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Los Angeles, California, 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 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 entry into the United States through fraud or the willful misrepresentation of a material fact: to wit, the applicant entered the United States with a fraudulent passport belonging to another person. 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) filed on his behalf. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with his wife and stepchildren.

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 March 17, 2008.

On appeal, the applicant, through counsel states that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application because the applicant submitted sufficient evidence to establish extreme hardship to his wife and stepchildren. *See Form I-290B*, filed April 16, 2008, and the accompanying Brief in Support of Appeal.

The record includes, but is not limited to, counsel's brief in support of the I-601 waiver of grounds of inadmissibility appeal, dated May 13, 2008, a copy of an undated declaration by the applicant's wife, [REDACTED] a copy of a psychological evaluation of the applicant and his wife by [REDACTED], dated April 3, 2008, and a copy of a bank statement from First Federal Bank of California for the applicant and his wife, for the period April 18 to May 16, 2005. 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 reflects that the applicant entered the United States with a fraudulent passport. The record reflects that the applicant was arrested on September 11, 1994 and charged with one count of passport fraud and one count of document fraud. The applicant was convicted of one count of passport fraud and sentenced to 3 years of probation and ordered removed from the United States. On March 17, 2005, the applicant's United States citizen wife filed a Petition for Alien Relative on the applicant's behalf (Form I-130), and on the same date, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the Form I-130 petition; a Form I-601 and a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. On July 12, 2005, the Form I-130 was approved. On March 17, 2008, the Field Office Director denied the applicant's Form I-601, finding that the applicant had procured entry into the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. On April 16, 2008, the applicant through his attorney filed a Form I-290B, Notice of Appeal.

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 wife 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.

In this case, the record reflects that the applicant’s spouse, [REDACTED], is a 42 year-old native of Mexico and citizen of the United States. The applicant and his wife were married in [REDACTED], on June 1, 2004, and have no children together. The record reflects that the applicant’s wife has two children from a prior marriage. The applicant’s spouse states that she is suffering extreme emotional, psychological and financial hardships as a result of the denial of the waiver application.

Regarding the emotional and psychological hardship of separation, the applicant’s wife states that she and her children were deeply impacted by the loss of her first husband, the biological father of her children, in 2002, that the applicant’s presence in her life began to fill the “huge void” in her heart, and that he has loved and taken care of her children as if they were his own. *See undated Declaration by [REDACTED]* The applicant’s wife states: “it will be very difficult for my children and I if [the applicant] had to leave. I would greatly miss his love and support. Also, I would be overwhelmed with the role of mother and father to my children. More importantly, I could not bear to see my children suffer a great loss. They have already gone through the loss of their biological father several years ago and to have to undergo another loss is too great to bear for them and for me to see them suffer it.” *Id.* at #8. Counsel states that the applicant’s wife recently lost her first husband, that the applicant is her “sole

source of emotional support,” that in the applicant, she has found a new life partner and father for her children, and that if the applicant is returned to Mexico, his wife’s children “would experience extreme hardship intensified by their recent loss of their biological father.” *See counsel brief in support of appeal*, dated May 13, 2008. Counsel also states that the applicant’s wife has a demanding career and relies on the applicant to be the primary caregiver to her children, that the applicant takes them to school, picks them up, cares for them after school and helps them with their homework among other things. *Id.* The record includes a psychological evaluation of the applicant and his wife by [REDACTED] on March 31, 2008, [hereinafter *The Report*].

[REDACTED] diagnoses the applicant’s wife with dysthymic disorder and generalized anxiety disorder. [REDACTED] states that the applicant’s wife would be emotionally, financially and physically “decimated” if the applicant were to be removed. *See The Report.* [REDACTED] also states that the applicant’s wife and her children need the applicant in their lives because he is the person who allows them to have hope, that he brings to the family a sense of stability and calm and that the applicant’s wife is incapable of providing this foundation of hope and caring to herself and her children. [REDACTED] concludes that if the applicant is removed from the United States, his wife’s present depression “would accelerate to the point of perhaps suicidal proportions and if not to that degree, certainly reaching a level of incapacitating her.” *See The Report* at page 8. [REDACTED] recommends immediate grief therapy for the applicant’s wife if the applicant were to be removed to Mexico, to help her cope with the loss of the applicant as well as the loss of her first husband. *See The Report* at page 9. The AAO acknowledges that the death of the applicant’s wife’s first husband would increase her emotional dependence on the applicant so that separation from the applicant would cause her emotional hardship.

Regarding financial hardship, the applicant’s wife, counsel and [REDACTED], state that the applicant’s wife will suffer extreme financial hardship as a result of family separation. Counsel states that the applicant’s wife relies on the applicant to care for her children so that she can concentrate on her demanding career managing properties. Counsel states that if the applicant’s wife were to lose the applicant, she would not have the emotional energy to keep up the grueling schedule her job dictates, and she would be financially vulnerable and alone. *See Counsel’s Brief in Support of Appeal*, dated May 13, 2008. The record does not contain evidence in support of the assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also does not contain information about the applicant’s income, and the family’s current income and expenses. The record does contain copies of the applicant’s wife’s Individual Income Tax Returns (Form 1040) for the years 2001 through 2003, but nothing about the applicant and his wife’s joint income tax returns. Absent information about the family’s income and expenses, the AAO cannot conclude that family separation would cause extreme financial hardship to the applicant’s wife. Also, the record reflects that the applicant’s wife completed a Form I-864, Affidavit of Support, in 2005, which shows that her income was \$134,215, and she testified that her income alone was sufficient to support her family of six including the applicant.

The AAO finds that the evidence in the record considered cumulatively does not establish that the hardship the applicant’s wife faces rises to the level of extreme hardship.

Regarding relocation, the applicant's wife does not claim hardship if she relocated to Mexico with the applicant. Counsel however, states that the applicant's wife would want to remain in the United States because there are no guarantees that in Mexico she would be able to provide for her children. Counsel states that the applicant's wife has had continuous self-employment in the property management business, managing the properties left to her by her late husband, and that she cannot sell the properties or trust any one to manage them for her. *See Counsel's Brief in Support of Appeal*, dated May 13, 2008.

While the AAO acknowledges the claims made by counsel on behalf of the applicant's wife, it does not find the evidence in the record to support them. The record contains no documentation, such as country condition reports on Mexico, to show that the applicant's wife will be unable to find employment or operate a business there. The AAO also notes that other than the statement from counsel, the record does not include any evidence of financial, medical, or other types of hardship that the applicant's wife would experience if she relocated to Mexico to be with the applicant. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the applicant has failed to demonstrate that his wife would suffer extreme hardship if she were to relocate to Mexico with the applicant.

In sum, although the applicant's wife claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

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

ORDER: The appeal is dismissed.