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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

H5

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: NOV 15 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (INA), 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.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. The matter 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 Taiwan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact to procure an immigration benefit. 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 with her U.S. citizen husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated February 12, 2010.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [redacted] indicating they were married on October 2, 2008; a letter from Mr. [redacted]; a letter from Mr. [redacted]s physician and a list of Mr. [redacted] prescription medications; a psychological report for Mr. [redacted] several letters of support; photographs of the applicant and her husband; tax, employment and financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

Section 212(i) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant completed and signed a Nonimmigrant Visa Application on October 17, 2007. On the visa application, the applicant stated that her current

occupation was "Sales Manager" and that her present employer was "[redacted]" The applicant certified that she read and understood all of the questions on the application and that no other person prepared the application for her on her behalf. *U.S. Department of State, Nonimmigrant Visa Application*, dated October 17, 2007. Based on this visa application, the applicant was issued a B1/B2 visitor's visa on October 18, 2007. She entered the United States using her visitor's visa on November 30, 2007, and again on June 10, 2008.

The record further shows that the applicant married the applicant in October 2008. She filed an application to adjust her status as well as a Biographic Information form (Form G-325A). On her Form G-325A, the applicant stated that she had not been employed between February 2004 and February 2009. *Biographic Information form (Form G-325A)*, dated February 6, 2009 (indicating "N/A" for her last five years of employment). By letter dated September 30, 2009, USCIS requested additional information from the applicant regarding any employment she may have had at [redacted]. In response to this request, the applicant submitted a declaration stating, "I, [redacted] have never worked for a Taiwan based company called [redacted]" *Declaration of M*[redacted], dated October 7, 2009. Based on this discrepancy regarding her employment, the field office director found the applicant inadmissible for willfully misrepresenting a material fact in order to procure an immigration benefit.

On appeal, the applicant contends that she completed her visa application using Chinese characters and that she included information regarding her previous employer, [redacted]" She states that [redacted] was her brother's company and that she worked there part-time as an accountant. According to the applicant, she "would transliterate the name of [her] brother's company as [redacted]' and not [redacted]" She claims that her brother owns only one store and that she "did not recognize the company name given by USCIS, especially since it included [redacted]' *Letter from* [redacted] dated January 22, 2010.

The AAO finds the applicant's explanation unpersuasive. The Act clearly places the burden of proving eligibility for admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Here, the applicant has failed to provide any independent objective evidence to explain or reconcile the discrepancies between her visa application and her subsequent declaration, Form G-325A, and letter. Significantly, the record does not contain a copy of the visa application the applicant purportedly completed using Chinese characters and, therefore, there is no evidence the applicant's visa application was ever translated from Chinese into English. The applicant indicated on her visa application that there was no other person who prepared her visa application on her behalf and she

certified that her answers were true and correct. In addition, the applicant does not provide any explanation for why her visa application states she worked as a Sales Manager, while her Form G-325A indicates she was unemployed, and her letter indicates she worked as an Accountant. The applicant has not submitted any objective evidence, such as a letter from her brother who purportedly owns [redacted], indicating the name of the company where the applicant worked or when and in what capacity she worked there. Based on these factors, the AAO finds the applicant's explanation unpersuasive and concludes that she is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, Mr. [redacted] states that he needs his wife to remain in the United States because he suffers from several, serious health problems. He states he suffers from Type 2 diabetes with a diabetic peripheral neuropathy, hyperlipidemia, hypertension, and chronic osteoarthritis. According to Mr. [redacted], his diabetes is so severe that he needs four shots of insulin per day and he is taking the maximum dosage of medication for his severe high blood pressure. Mr. [redacted] also contends he suffers from severe low back pain as a result of spondylolisthesis of his lumbar spine and that he continues to have back pain despite having had back surgery in 2006. He states he takes ten different prescription medications for his conditions and that his wife helps him control his conditions in many ways, including forcing him to exercise, cooking well-balanced meals, and helping to reduce his stress by massaging his feet. In addition, Mr. [redacted] contends he

would suffer severe emotional harm, particularly considering his immediate family members have all passed away, including his mother, father, stepfather, and brother. He states his wife is his only remaining immediate family member. Furthermore, Mr. [redacted] states he cannot move to Taiwan to be with his wife because he would be forced to give up his job as a Mechanical Engineer Technician, a position he has held with the same employer since 1978. He states he was born and raised in the United States and does not speak Chinese. *Letter from* [redacted], dated January 22, 2010.

A letter from Mr. [redacted] physician states that "Mr. [redacted] suffers from multiple chronic medical problems, including diabetes mellitus type 2 with a diabetic peripheral neuropathy, hyperlipidemia, hypertension, chronic osteoarthritis, and chronic low back pain from spondylolisthesis of his lumbar spine." According to the physician, Mr. [redacted] diabetes is severe, requiring four injections of insulin per day in order to prevent dangerous hyperglycemia, and his hypertension is also severe and difficult to control. The physician contends Mr. [redacted] requires frequent exams, lab work, and access to medications and supplies. In addition, the physician lists ten medications Mr. [redacted] requires, several of which require multiple doses each day. *Letters from Dr.* [redacted] dated December 15 and 18, 2009.

A psychological report for Mr. [redacted] diagnoses Mr. [redacted] with Generalized Anxiety Disorder and Major Depression. In addition, according to the psychologist, Mr. [redacted] showed evidence of suicidal ideation, and is especially dependent on his wife considering his medical needs and the fact that he has no immediate relatives who are still living. *Psychological Report by* [redacted], dated January 3, 2010.

Upon a complete review of the record evidence, the AAO finds that the applicant's husband would suffer extreme hardship if the applicant's waiver application were denied. The record shows that Mr. [redacted], who is currently fifty-seven years old, suffers from several serious health conditions including severe diabetes and severe hypertension. The record indicates he takes ten different prescription medications daily and that despite medication, according to his physician, his conditions remain difficult to control. In addition, according to the psychologist, Mr. [redacted] suffers from anxiety, depression, and suicidal ideation. Copies of death certificates in the record show that both of Mr. [redacted]'s parents are deceased, and Mr. [redacted] contends he requires his wife's assistance both physically and emotionally as he no longer has any immediate relatives to assist him. Given the applicant's husband's age and numerous chronic, serious health problems, the AAO finds that the hardship Mr. [redacted] will experience if his wife's waiver application were denied is extreme, going well beyond those hardships ordinarily associated with a spouse's inadmissibility to the United States.

It would also constitute extreme hardship for Mr. [redacted] to move to Taiwan to avoid the hardship of separation from the applicant. Relocating to Taiwan would disrupt the continuity of his health care and the procedures his doctor has in place to monitor and treat him. Furthermore, according to Mr. [redacted], who was born in the United States, he has lived in the United States his entire life and does not speak Chinese. In addition, Mr. [redacted] would be forced to give up employment which he has held for over thirty years. Mr. [redacted] would need to adjust to a life in Taiwan, a difficult situation

made even more complicated given his age and his physical and mental health conditions. In sum, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr[redacted] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors 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 include the applicant's misrepresentation of a material fact to procure an immigration benefit and unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including her U.S. citizen husband; the extreme hardship to the applicant's husband if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations 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.

ORDER: The appeal is sustained.