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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

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[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON DC Date:

NOV 17 2010

IN RE: Applicant:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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. 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, Washington D.C. A subsequent motion to reopen was granted and the waiver application was denied. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Ecuador, was found 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 having attempted to procure entry to the United States by fraud and/or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to be able to reside in the United States with her U.S. citizen spouse, her U.S. citizen biological child, born in 1989 and her lawful permanent resident step-children, born in 1988 and 1992.

On motion, the field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 11, 2008.

In support of the appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal (Form I-290B), dated August 1, 2008. The entire record was reviewed and considered in rendering this decision.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

Regarding the field office director's finding that the applicant was inadmissible under Section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation, the record establishes that the applicant attempted to procure entry to the United States in December 8, 1994, by falsely claiming to be a U.S. citizen. *See Record of Sworn Statement in Affidavit Form from* [REDACTED] dated December 7, 1994. The field office director correctly found the applicant to be inadmissible to the United States under section 212(a)(6)(C) of the Act, for having attempted to procure entry to the United States by fraud and/or willful misrepresentation.¹

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, her biological child or her step-children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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-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*:

¹ In addition, the AAO notes that the applicant, on the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), responded "No" to the question "...[H]ave you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S., or any other immigration benefit?" In addition, during two separate I-485 interviews, in March and July 2006, the applicant, when questioned, denied ever having attempted to procure entry to the United States by fraud or willful misrepresentation. Only after an immigration officer showed the applicant a picture taken of her in December 1994, when she attempted to enter the United States with a fraudulent U.S. passport, did she acknowledge that she had attempted to procure entry to the United States in 1994 by presenting a fraudulent U.S. passport.

[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) (██████████ 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 applicant’s U.S. citizen spouse asserts that he will suffer emotional and physical hardship were he to reside in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he states that he loves his wife very much and admires her devotion to him and the children and were she to relocate abroad, he would suffer emotional hardship. In addition, the

applicant's spouse explains that he has been diagnosed with congestive heart failure, diabetes and high blood pressure, and is dependent on his wife to take charge of his care and help him fight his diseases. *Letter from* [REDACTED] dated October 29, 2007. In a separate declaration, the applicant's spouse outlines the medications he takes every day and their schedule and confirms that his wife makes sure he takes said medications, prepares meals according to his dietary restrictions and takes care of the heavy lifting and housework, including vacuuming, laundry and grocery shopping. Finally, the applicant's spouse explains that his wife has become a mother to his two biological children, as their mother resides in Ecuador, and both the applicant's child and her step-children would suffer hardship were she to relocate abroad due to her inadmissibility, thereby causing him extreme hardship. *Affidavit of* [REDACTED] dated September 13, 2006.

In support, medical records and a letter from the applicant's spouse's treating physician since March 2002, [REDACTED], have been provided. [REDACTED] confirms that the applicant's spouse suffers from severe congestive heart failure and diabetes and has been recently diagnosed with Cysticercoids, a serious but curable condition. [REDACTED] explains that his family plays a very important role in keeping him in good health. *Letter from* [REDACTED] dated October 31, 2007.

To begin, it has not been established that the applicant's U.S. citizen spouse would suffer extreme emotional hardship were the applicant to relocate abroad due to her inadmissibility. The record indicates that the applicant's spouse has a support network, including his children, teenagers or adults at the time of the Form I-601 denial in July 2008; it has not been established that they would be unable to provide the emotional, and physical if needed, support he may need due to his spouse's physical absence. Nor has been established that the applicant's child or step-children's hardships due to her physical absence will cause extreme hardship to the applicant's spouse, the only qualifying relative in this case.

In addition, the AAO notes that the letter provided from the applicant's spouse's treating physician confirms that the applicant's spouse suffers from numerous medical conditions, but makes no reference to the short and long-term treatment plan, and what hardships he will face if the applicant specifically is not physically present in the United States. The applicant's spouse's claims to physical hardship are diminished by the fact that he has been able to maintain full-time employment, since 2002; his current position is in management, earning approximately \$45,000 per year. *Letter from* [REDACTED] *Manager Store #792, Giant Foods*. Moreover, it has not been established that the applicant's spouse would be unable to travel to Ecuador, his native country, to visit his spouse on a regular basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Finally, with respect to counsel's contention that the applicant's spouse will suffer financial hardship were his wife to relocate abroad, as she contributes financially to the household, the AAO notes that no documentation has been provided establishing the applicant and her family's income and

expenses, assets and liabilities, to establish that the applicant's spouse's income alone would cause him extreme financial hardship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of*

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's spouse's continued care and survival directly correlate to the applicant's physical presence in the United States. While the AAO recognizes that the applicant's spouse may need to make alternate arrangements with respect to his own care and the care of his three children due to the applicant's inadmissibility, it has not been established that such arrangements would cause him extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criteria, counsel references the problematic economic and political situation in Ecuador and the high incidents of killings, kidnappings and forced recruitment of minors. *Brief in Support of Motion*. Documentation regarding country conditions in Ecuador has been submitted by counsel.

Were the applicant's spouse to relocate to Ecuador to reside with the applicant due to her inadmissibility, the record reflects that the applicant's spouse would encounter financial hardship due to the problematic economic situation in Ecuador, as corroborated by the U.S. Department of State.² Moreover, the applicant's spouse safety and well-being would be at risk due to severe crime in Ecuador.³ Finally, the applicant's spouse would lose his long-term gainful employment, and would no longer receive medical care by physicians familiar with his diagnosis and treatment. The AAO thus concludes that based on a totality of the circumstances, the applicant's spouse would

² The U.S. Department of State reports that the poverty rate in Ecuador in 2006 was 35% and the per capita income in 2008 was less than \$4000. *Background Note-Ecuador*, U.S. Department of State, dated May 24, 2010.

³ As noted by the U.S. Department of State,

Crime is a severe problem in Ecuador. Crimes against American citizens in the past year ranged from petty theft to violent crimes, including armed robbery, home invasion, sexual assault and homicide. Low rates of apprehension and conviction of criminals – due to limited police and judicial resources – contribute to Ecuador's high crime rate.

experience extreme hardship were he to relocate to Ecuador to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.