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



U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: CHICAGO Date: NOV 19 2010

IN RE: Applicant: [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:

[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. 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,

for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible 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 procuring admission into the United States by willful misrepresentation. 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 with his U.S. citizen wife.

The district director concluded that the applicant 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 District Director*, dated April 5, 2008.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B*, dated April 30, 2008.

The record contains a statement from counsel on Form I-290B; copies of birth records for the applicant and his wife; copies of tax and banking records for the applicant and his wife; a psychological evaluation of the applicant's wife; a copy of a marriage record for the applicant and his wife, and; copies of two leases. It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on or about May 2, 2008. However, as of October 21, 2010, the AAO had received no further documentation or correspondence from the applicant or counsel. On October 21, 2010, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. As of October 28, 2010, the AAO had not received a response to the facsimile, and the record is deemed complete. The entire record was reviewed and considered in rendering this decision.

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

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.

The record shows that the applicant purchased a passport and travel services for approximately \$20,000 in order to enter the United States. In or about August 2005, he presented a passport that belonged to another individual and was admitted to the United States. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

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. 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.

On appeal, counsel contends that the applicant’s wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Statement from Counsel on Form I-290B* at 2. Counsel asserts that the district director failed to give adequate weight to the applicant’s wife’s mental health issues or the psychological evaluation presented to show that she suffers from major depression. *Id.* Counsel further contends that the submitted tax records show that the applicant’s wife will endure economic hardship should the applicant depart the United States. *Id.* Counsel states that the applicant’s wife will be compelled to act as a single mother again, which constitutes extreme hardship. *Id.*

The applicant previously submitted an evaluation of his wife, conducted by a medical psychologist, Dr. [REDACTED]. Dr. [REDACTED] provided that she evaluated the applicant’s wife on September 21, 2007 and administered five psychometric tests. *Report from Dr. [REDACTED]*, dated September 21, 2007. Dr. [REDACTED] recounted information that she learned from the applicant’s wife, including that the applicant’s wife works long hours as has five children (now approximately ages 23, 21, 20, 18, and 15). *Id.* at 2. Dr. [REDACTED] added that the applicant supports his wife emotionally and financially, and that he serves as a positive role model for his wife’s children. *Id.* at 2-3. Dr. [REDACTED] discussed the applicant’s wife’s physical health and prior medical history and medication. *Id.* at 3. Dr. [REDACTED] stated that the applicant’s wife struggles with depression despite former treatment. *Id.* at 4. Dr. [REDACTED] found that the applicant’s wife exhibited symptoms and test results consistent with major depressive disorder, and that she displays impairment in life coping skills. *Id.* at 4, 6. Dr. [REDACTED] indicated that the applicant’s wife relies on the applicant to help her cope with severe emotional distress, financial stress, and care of her children. *Id.* at 6. Dr. [REDACTED] recommended that the applicant’s wife have psychiatric consultation to see if she could benefit from medical therapy

for her depressive symptoms, and further testing to check her memory and cognitive functioning. *Id.* at 7.

Upon review, the applicant has not shown that his wife will experience extreme hardship should he reside outside the United States. The applicant has not asserted or shown that his wife will suffer hardship should she join him in India. Without clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's wife may experience. In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Thus, the applicant has not shown that his wife will suffer extreme hardship should she relocate abroad to maintain family unity.

The applicant has not established that his wife will endure extreme hardship should he depart the United States and she remain. It is noted that the record does not contain a statement from the applicant or his wife, or any other individual with direct knowledge of their relationship and circumstances. The brief statement from counsel on Form I-290B does not serve as evidence of hardship to the applicant's wife. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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 AAO has carefully examined the report from Dr. [REDACTED]. Yet, as correctly observed by the district director, the report was generated based on a single interview with the applicant's wife and psychological testing. Dr. [REDACTED] made references to the applicant's wife's prior medical history, existing health conditions, and medications. However, the applicant has not submitted any medical documentation to support these statements, and Dr. [REDACTED]'s report is not deemed sufficient to show by a preponderance of the evidence the existence of physical health ailments of the applicant's wife, or her medical treatment or medications. Dr. [REDACTED] discusses the applicant's wife's financial circumstances and economic reliance on the applicant, yet she does not cite any financial documents or otherwise support that she has direct knowledge of the applicant's and his wife's economic challenges. Thus, her report is not reliable evidence of financial hardship to the applicant's wife.

The AAO acknowledges that the separation of spouses often results in significant emotional hardship. However, Dr. [REDACTED]'s report from September 21, 2007, by itself, is not sufficient evidence to show that the applicant's wife will endure extreme emotional hardship should she reside apart from the applicant. Dr. [REDACTED] recommended that the applicant's wife have psychiatric consultation to see if she could benefit from medical therapy for her depressive symptoms, and further testing to check her memory and cognitive functioning. Yet, on appeal the applicant has not provided any indication or evidence to show that his wife sought further evaluation or treatment for mental health issues. The record contains no other evidence of the applicant's wife's possible psychological hardship.

The applicant has not shown that his wife will endure economic difficulty should she reside in the United States without him. The most recent income information in the record consists of 2005 tax returns. However, the appeal was filed on or about May 2, 2008, and the applicant has not

supplemented the record with current financial data. Nor has the applicant shown that his wife faces unusual expenses. The record contains references to the applicant's wife's five children, yet the applicant has not provided birth certificates for the claimed children, or otherwise shown his wife's level of responsibility for them. Based on Dr. [REDACTED]'s report, the applicant's wife's children are approximately ages 23, 21, 20, 18, and 15, and the record does not support that the applicant's wife has responsibility for her adult children or the burden of childcare expenses. Accordingly, the applicant has not shown that his wife will endure significant economic difficulty in his absence.

The applicant has not presented explanation or evidence to show that his wife will face other elements of hardship. Based on the foregoing, the applicant has not shown that his wife will endure extreme hardship should he depart the United States and she remain.

Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to a qualifying relative, as required for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In the present matter, the applicant has not met his burden to prove that he is eligible for a waiver under section 212(i) of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.