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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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FILE:

Office: CHICAGO

Date:

NOV 24 2010

IN RE:

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:

SELF-REPRESENTED

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 application for waiver of inadmissibility was denied by the Field Office Director, Chicago, Illinois. 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 Ecuador who was 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 having attempted to procure entry into the United States by willful misrepresentation. The applicant is married to a U.S. citizen and 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 her U.S. citizen spouse and U.S. citizen children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 11, 2009.

On appeal, the applicant asserts that her family would suffer extreme hardship if she were removed from the United States. *Form I-290B, Notice of Appeal*, dated October 12, 2009. The applicant indicated on her appeal that she would submit additional evidence within 30 days of filing her appeal notice. However, the AAO has not as of yet received additional evidence from the applicant. As it has now been over one year since the applicant filed her appeal, the record will be considered complete for purposes of issuing a decision on the appeal.

The record contains, but is not limited to, statements from the applicant and her spouse, the applicant's children's birth certificates, the applicant's spouse's birth certificate, the applicant's marriage certificate, and financial documentation. The entire record was reviewed and considered in rendering this decision.

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

- (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 that:

- (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 Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that the applicant was apprehended by border patrol on October 5, 1994 under the alias, [REDACTED]

[REDACTED] Documentation related to this arrest confirms that upon the applicant's apprehension near Douglas, Arizona, the applicant provided her true name as [REDACTED] and country of nationality as El Salvador. *Form I-213, Record of Deportable Alien*. On October 6, 1994, the applicant was released on a \$2,000 bond paid by [REDACTED] pending a hearing before an immigration judge. *Form I-352, Immigration Bond*. On April 6, 2004, the legacy Immigration and Naturalization Service (INS) informed Mr. [REDACTED] that the bond was breached because of his failure to present the applicant for an interview at the New York District Office.

The director of the Chicago Field Office determined that the applicant was inadmissible for being "an alien who attempted to provide a false identity to officials of the United States government in order to avoid arrest and potential deportation, and thereby gain entry into the United States." The director further noted that "It is the contention of the Service that the avoidance of deportation from the United States is an inherently qualifying measure under this statute as a 'benefit' provided by the Act." The AAO finds that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act, but for reasons other than those cited by the director. A misrepresentation is generally material only if by it the alien received or could receive a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988). The AAO notes that the applicant's use of a false identity upon apprehension by border patrol was not material because the applicant remained deportable and her misrepresentations did not result, nor conceivably could have resulted, in the applicant being admitted to the United States or acquiring some other benefit under the Act. In other words, since the record reflects that at the time of the applicant's October 5, 1994 apprehension she stated she unlawfully entered the United States and she did not claim to be admissible to the United States, her use of a false identity was not to obtain any statutory relief from removal and did not provide her with eligibility for any other type of benefit under the Act for which she would not otherwise have been eligible.

The applicant's inadmissibility lies with her subsequent failure to disclose her apprehension on her Form I-485, Application to Register Permanent Residence or Adjust Status, which she filed on February 22, 2002. At Part 3 of the Form I-485, where an alien must indicate whether they have ever "been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations," the applicant responded "No." On the corresponding Form G-325A, Biographic Information form, where aliens are requested to provide any other names they have used, the applicant only provided her maiden name, "[REDACTED]." As noted by the director, during the applicant's initial adjustment interview on February 25, 2004, the applicant testified that she last entered the United States without inspection in 1991. It was only during the applicant's second adjustment interview on April 13, 2009 that she admitted in a sworn statement that she was apprehended by border patrol in Arizona on or about "September 1995" and identified herself to the border patrol officer as [REDACTED].

The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as “(1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.” 9 I&N Dec. 436, 447 (BIA 1960). The AAO finds that the applicant's misrepresentations on her adjustment application shut off a line of inquiry relevant to the applicant's eligibility which might have resulted in a proper determination that she be denied admission as a permanent resident. As stated by the BIA in *Matter of Arai*, “Section 245 of the Immigration and Nationality Act reposes with the Attorney General and his delegates the discretionary power to grant adjustment of status. Therefore it follows that mere eligibility for that privilege will not automatically result in a grant of the application.” 13 I. & N. Dec. 494, 495 (BIA 1970). The applicant's arrest on October 5, 1994 is an adverse factor that is relevant to the Secretary's determination of whether the applicant merits a favorable exercise of discretion. Her failure to disclose this information shut off a line of inquiry relevant to the Secretary's discretionary authority to grant adjustment. Consequently, she is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in order to gain admission into the United States as a permanent resident. The applicant does not contest her inadmissibility on appeal.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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.

The applicant asserts that if her waiver application is denied, her removal would cause emotional hardship to her husband, nine-year-old son and seventeen-year-old twin daughters. She states that she and her husband are working very hard to give their children stability, values and education. She contends that her removal would be devastating and disrupt their family life. The applicant notes that she is always attentive to her teenage daughters’ “achievements and their downfalls” and her son is “used to having a nurturing mother to attend his emotional needs.” She asserts that neither she nor

her husband would find employment in Ecuador because the country's economic situation is "going from bad to worse." She notes that her husband was born in the United States and has "no idea of how things work in Ecuador." The applicant states that her primary purpose for coming to the United States was because she could not find employment in Ecuador. The applicant notes that she and her husband have jobs to support their family. *Letter from* [REDACTED] dated September 1, 2009; [REDACTED] dated September 1, 2009.

The applicant's spouse asserts that he is devastated because the applicant faces removal. He states that he does not want to be separated from his spouse. He contends that his son's life would be destroyed if the applicant were removed. The applicant's spouse notes that as a child he was forced to live without either of his parents. He states that this was a "psychologically straining experience," for him and he fears that his son will suffer "permanent effects" from separation. *Declaration of* [REDACTED], dated September 1, 2009.

Upon review of the record, the AAO finds that the applicant has not established that her spouse will suffer extreme hardship if her waiver application is denied and she is compelled to depart the United States.

The applicant has not established that her spouse would suffer extreme hardship upon relocation to Ecuador. The applicant indicates that her spouse was born in the United States and would be unfamiliar with "how things work" in Ecuador. However, the applicant has not distinguished her spouse's circumstances from those commonly experienced by individuals who make the choice of relocating abroad due to a family member's inadmissibility. In addition, the applicant has not described her experience in Ecuador to show the conditions her spouse may encounter should he decide to join her. For instance, she has not stated whether she has family members who are willing to support her and her spouse in Ecuador until they become settled. The applicant's spouse is 37 years old, and has not stated or presented evidence to show that he or his children have any medical, psychological or other conditions, that would cause the applicant's spouse hardship upon relocation abroad. As such, the AAO cannot determine the extent to which the applicant's spouse will suffer difficulty from cultural readjustment upon relocation to Ecuador.

The applicant also asserts that she and her husband both have jobs to support their family, and would be unable to find employment in Ecuador. *Letter of* [REDACTED]. However, the applicant has not provided any financial documentation to show that she has ever been employed in the United States. The applicant's most recent Form G-325A, Biographic Information sheet, dated February 15, 2002, shows her occupation over the previous five years as "housewife." Although the record indicates that the applicant's spouse has recently been employed, his income is not above the federal poverty line. The three most recent tax returns in the record reflect that the applicant's spouse earned 3,686 in 2008; he earned 7,744 in 2003; and he earned 9,920 in 2002. There is nothing in the file that shows the applicant spouse is gainfully employed in the United States. Therefore, the record does not show that the applicant's spouse's relocation to Ecuador would cause him to suffer financially by leaving a stable, well-paying position in the United States. Furthermore, the applicant does not state whether her spouse is familiar with the Spanish language, nor does she explain whether her spouse lacks particular skills that would make his finding employment in Ecuador

difficult. Consequently, the record does not show that the applicant's spouse would suffer financial hardship upon relocation to Ecuador.

All presented elements of hardship to the applicant's spouse, should he relocate with the applicant to Ecuador, have been considered in aggregate. Based on the foregoing, the applicant has not established that her spouse would suffer extreme hardship upon relocation to Ecuador.

The applicant has also not shown that her spouse will suffer extreme hardship should he remain in the United States separated from her.

The AAO acknowledges that the separation of spouses often results in significant psychological hardship. The statements from the applicant and her spouse demonstrate their strong family bond and their interests in keeping their family unified. As noted, 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. However, the applicant has not presented any evidence, such as a psychological report, to show that the applicant's spouse is experiencing emotional hardship that is extreme. The applicant has not presented any other hardship factors in this case to distinguish the hardship her spouse would suffer upon separation from the common hardships suffered by family members of inadmissible aliens. While the AAO gives significant weight to the emotional hardship of separation, the applicant has not shown that this hardship is atypical and rises to the level of extreme hardship. Based on the foregoing, the applicant has not shown that her spouse will suffer extreme hardship should he reside in the United States

Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to her spouse, 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 she 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. *See* 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.