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U.S. Citizenship and Immigration Services
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**U.S. Citizenship
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FILE:



Office: SAN JOSE, CALIFORNIA

Date: **NOV 29 2010**

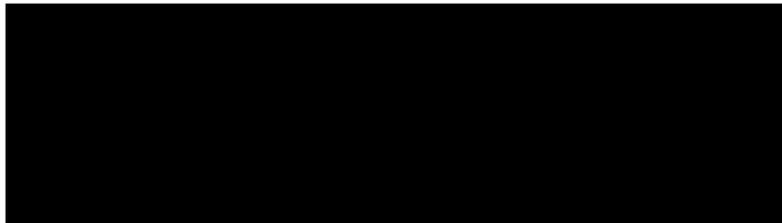
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Tariq Syed
for

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California, and 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 the [REDACTED] who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the mother of three stepchildren. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 in the United States with her spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 8, 2008.

On appeal, the applicant, through counsel, asserts that the Field Office Director "abused his discretion when he denied the I-601 waiver..., because the applicant's qualifying relative, her U.S. Citizen spouse, is and will continue to suffer extreme hardship." *Form I-290B*, filed June 6, 2008.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's husband; letters of support for the applicant and her husband; medical documentation for the applicant's husband; bank statements, tax documents, insurance documents, household bills, utility bills, mortgage documents, medical bills, and a lease agreement; articles on the influenza pandemic, social issues in the [REDACTED] and the economy in the [REDACTED] a consular information sheet on the [REDACTED] and a U.S. Department of State travel warning for the [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an

immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, the record indicates that the applicant procured admission to the United States on May 5, 1991 by presenting a [REDACTED] passport and visa under another name. Based on the applicant's misrepresentation, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 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 United States Citizenship and Immigration Service (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 (Board) 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) (██████████ 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 ██████████, 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 first prong of the analysis addresses hardship to the applicant’s husband if he relocates to the ██████████. In an affidavit dated June 19, 2008, the applicant’s husband states he has been feeling weak lately, his blood pressure is fluctuating, and he suffers from erectile dysfunction. He states his “medical problems are properly attended to, treated and monitored by [his] U.S. doctors.” The AAO notes that the record establishes that the applicant’s husband is being treated for hypertension, hyperlipidemia, pre-diabetes, and erectile dysfunction. The applicant’s husband states he is also suffering from stress, he is emotionally devastated, and he believes his erectile dysfunction is a result of the stress he is suffering from. In an affidavit dated September 21, 2007, the applicant’s husband states he is “not confident that [his] medical needs will be satisfied by the ██████████ medical facilities and hospitals.” Additionally, he claims that he will lose his “medical and health coverage or protection programs if [he] relocate[s] to the ██████████. [His] health plans are not honored in the

██████████ In counsel's appeal brief dated June 23, 2008, counsel states the applicant's husband "will not have access to his U.S. medical insurance support, and he will be forced to pay for his treatment and medication," and "it would not be affordable to [the applicant's husband]." See *PhiHealth services and benefits*, dated March 19, 2007. The AAO notes that based on a submitted article on medical treatment in the Philippines, uncontrolled diabetes and hypertension are considered high risk cases and will not qualify for the insurance package. See *Disclaimer Notice for Medical Tourism Philippines*, undated. Additionally, the AAO notes the applicant's husband's concern for his medical conditions, his out-of-pocket expenses for medical care in the Philippines, and lack of health insurance in the Philippines.

Counsel states the applicant's husband has lived in the United States for twenty-three years and all of his family resides in the United States, including his three children and grandchildren. The applicant's husband states he has no more ties to the ██████████. The applicant's husband also states his "immigration status would be uncertain in the ██████████." The applicant's husband claims that because of his age, he is "no longer considered 'employable'" and the applicant would have a difficult time finding a job in the ██████████. The applicant's husband states that he "cannot afford a complete relocation to the ██████████." Counsel states the applicant's husband "has substantial economic ties in the United States." The AAO notes that the record establishes that the applicant and her husband have numerous financial obligations in the United States. The AAO acknowledges that the applicant and her husband might suffer some level of financial hardship in relocating to the Philippines.

Counsel states "a move to the ██████████ would cause extreme hardship to the [applicant's husband], given the country conditions found in that country." The applicant's husband states "[t]he economy and political climates are unstable, and the unemployment rate is extremely high. Being an American citizen, [he] [is] subject to safety and travel restrictions imposed to U.S. citizens going abroad. [His] life might be endangered." The AAO notes that on November 2, 2010, the U.S. Department of State issued a travel warning to United States citizens which warned "U.S. citizens of the risks of terrorist activity in the ██████████... Terrorist attacks could be indiscriminate and could occur not only in the southern islands but also in other areas, to include ██████████ Targeted sites may be public gathering places that are frequented by expatriates and foreign travelers, including American citizens. Such sites could include, but are not limited to, airports, shopping malls, conference centers and other public venues." Additionally, "[k]idnap-for-ransom gangs are active throughout the ██████████ and have targeted foreigners." "The Department of State remains concerned about the continuing threat of terrorist actions and violence against U.S. citizens and interests throughout the world." The AAO notes the safety issues in the Philippines.

Based on the travel warning issued to United States citizens, the applicant's spouse's medical issues, employment issues, and the emotional hardship of being separated from his children and grandchildren, the AAO finds that the applicant's husband would suffer extreme hardship if he were to return to the ██████████ to be with the applicant.

Regarding the hardship the applicant's husband would suffer if he were to remain in the United States without the applicant, the AAO notes that medical documentation in the record establishes that the applicant's husband suffers from hypertension, hyperlipidemia, pre-diabetes, and erectile dysfunction, and he has been prescribed medications. The applicant's husband claims that because of his medical conditions, he is on special diets, which the applicant provides for him. He states the applicant motivates him to exercise and she monitors his medication. The applicant's husband claims that without the applicant's presence, his health will deteriorate. The applicant's husband states he needs the applicant's "comforting presence," "she takes care of all of [his] needs," and "she is [his] best friend, confidante and anchor." He also states he is depressed, he feels helpless and stressed, he is becoming an insomniac, and he does not have much of an appetite.

The applicant's husband states he is "completely dependent on [the applicant] because [he] [is] unemployed." The AAO notes that the record establishes that the applicant's husband retired on March 30, 2007, and he has applied for various jobs but has not received an offer of employment, yet. Additionally, the record establishes that the applicant's husband receives \$880.66 a month in retirement benefits. The applicant's husband states "[w]ithout [the applicant's] financial support, [he] cannot pay [his] existing monthly financial obligations." He claims that he has "asked for financial assistance from [his] relatives and close friends. [He] owe[s] them a total of [\$23,000.00] in personal debt/accommodation." The applicant's husband states his home in [REDACTED] is in foreclosure. The AAO notes that the record includes a March 11, 2008 Notice of Trustee's Sale regarding the applicant's and her husband's property in [REDACTED]. The applicant's husband states the applicant "would find it extremely hard to find a job at her age." The AAO notes that the record establishes that the applicant is a registered nurse in the [REDACTED]. The applicant's husband claims "nurses are among the most underpaid professional workers in the [REDACTED]." He states he would have to support the applicant in the [REDACTED]. Additionally, he states that because of his medical conditions and the high-cost of airfare, he would not be able to visit the applicant in the [REDACTED]. The AAO finds the record to include some documentation of the applicant's and her husband's income and expenses in the United States, including utility bills, credit card statements, a medical bill, a public employees' retirement system notice, and wage summaries for the applicant and her husband.

Considering the applicant's spouse's mental health issues, medical issues, financial issues, and the normal effects of separation, the AAO finds the record to establish that the applicant's husband would face extreme hardship if he remained in the United States in her absence.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which 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 are the applicant's procurement of admission into the United States through fraud or the willful misrepresentation of a material fact, and periods of unauthorized stay and employment. The favorable and mitigating factors are the applicant's United States citizen

husband and stepchildren, the extreme hardship to her husband if she were refused admission, the absence of a criminal record, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.