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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  
and Immigration  
Services

HLS

FILE: [REDACTED] Office: NEWARK Date: **OCT 01 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:

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.

Thank you,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Dominican Republic 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 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 her U.S. citizen husband and lawful permanent resident parents.

The field office 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 Field Office Director*, dated June 2, 2009.

On appeal, the applicant asserts that her husband has medical needs and he requires her support. *Statement from the Applicant*, received July 29, 2009.

The record contains statements from the applicant, the applicant's husband, friends of the applicant, and the applicant's church; medical records for the applicant's husband; copies of birth certificates for the applicant and her husband; a copy of the applicant's passport, and; documentation regarding the applicant's and her husband's employment, taxes, banking, and expenses. 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 reflects that on September 25, 1998 the applicant entered the United States pursuant to the visa waiver program using a fraudulent passport that falsely indicated that she was a citizen of Portugal. Thus, she procured entry by misrepresentation. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant previously stated that she hired an individual for \$400 to assist her in obtaining a passport and visa for travel to Europe and the United States. *Previous Statement from the Applicant*, dated March 27, 2009. She provided that she was unaware that the passport she received was fraudulent. *Id.* at 1-2. However, the passport clearly indicated that she was a citizen of Portugal, and the record shows by a preponderance of the evidence that the applicant was aware that the passport misrepresented her true nationality. Thus, the record supports that the applicant was correctly found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband, mother, and father are the only qualifying relatives 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*:

[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, the applicant asserts that her husband has medical needs and that he requires her care and support. *Statement from the Applicant* at 1. The applicant states that she and her husband are faced with financial hardship. *Id.* The applicant previously explained that she and her husband have been together since the year 2000. *Prior Statement from the Applicant*, dated July 10, 2006. She stated that her husband will experience hardship should he relocate to the Dominican Republic. *Id.* at 1. She explained that he will endure a decreased quality of life in an unfamiliar country where there are no employment opportunities, especially for foreigners. *Id.* She noted that her husband is accustomed to having basic necessities such as consistent water and electricity services. *Id.*

The applicant stated that her husband would endure difficulty in the Dominican Republic related to his health problems due to a lack of medical insurance or appropriate medical services. *Id.* at 2. She explained that her husband has a stable job in the United States that provides medical coverage for both of them. *Id.* She added that her husband was born in the United States and that all of his family, friends, community, memberships, hobbies, and religious activities are here. *Id.* She stated that her husband's religious activities may be affected in the Dominican Republic due to a lack of Spanish language ability. *Id.* She indicated that she and her husband do not intend to reside separately. *Id.*

The applicant's husband stated that he will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from the Applicant's Husband*, dated September 14, 2007. He explained that he has had a drug and alcohol abuse problem for at least eight years. *Id.* at

1. He stated that the applicant has been his support and biggest inspiration for recovery. *Id.* He indicated that he has been in a rehabilitation program since October 2006 and he remains in treatment. *Id.* He provided that he had remained drug- and alcohol-free for approximately 10 months as of the date of his statement, September 14, 2007. *Id.* He explained that during his periods of treatment the applicant remained in their home by herself, and she met the financial needs of their household alone. *Id.* He expressed that he does not believe he can recover from addiction without the applicant's presence. *Id.* He stated that if the applicant departs the United States he will be forced to leave with her, as family separation is not an option. *Id.*

The applicant's husband provided that he has concern for residing in the Dominican Republic due to limited employment opportunities, limited food and health services, and a high rate of crime. *Id.* He provided that he and the applicant wish to have a family, and they considered adopting a child from the Dominican Republic, yet they would be unable to provide a quality experience for a child there. *Id.* at 2. He noted that his recovery from addiction would be impacted by the need to integrate into an unfamiliar society and his separation from his church and community in the United States. *Id.* He added that the applicant is his only family member, as his mother and father passed away. *Id.*

The applicant's husband explained that he is faced with health conditions that have resulted from alcohol and drug abuse. *Id.* He noted that he was hospitalized for internal bleeding and problems with his liver, and that the applicant cared for him including preparing a special diet and assisting with his medication. *Id.*

The applicant's husband stated that he is unemployed and the applicant has supported him financially. *Id.*

The applicant provides a letter from her husband's physician, [REDACTED] who states that her husband is under treatment for Liver Cirrhosis stage III, Esophagus varices, s/p multiple bandings, and hepatitis C positive. *Letter from [REDACTED] dated July 21, 2009.* Dr. [REDACTED] indicated that the applicant's husband requires continued medical care and family support due to the advanced stage of his disease. *Id.* at 1. The applicant provides other medical documentation in connection with her husband's treatment that reflects that he suffered from anemia and underwent gastroenterological testing. *Medical Records for the Applicant's Husband*, dated 2007 to 2009.

The applicant further provided documentation regarding her husband's admission to a drug rehabilitation program on October 10, 2006. *Letter from The [REDACTED], Inc.*, dated August 10, 2007. A letter from a counselor intern and assistant director for the program provided that the applicant's husband remained in the treatment program as of August 10, 2007, in which he received intensive therapy for behavioral and psychological problems related to addiction, as well as basic medical care, individual counseling, family sessions, and group counseling. *Id.* at 1.

Upon review, the applicant has established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The applicant has shown that her husband will suffer extreme hardship should he relocate to the Dominican Republic to maintain family unity. The AAO has carefully examined the medical and addiction treatment documentation

provided for the applicant's husband. The record clearly shows that he has a need for extensive addiction recovery services. The applicant has provided documentation that establishes that her husband is receiving such services in the United States. Should the applicant's husband relocate to the Dominican Republic he will become separated from the professionals who presently provide his addiction recovery treatment. The record supports that the applicant's husband will endure significant hardship should he end his addiction treatment. The applicant's husband's struggle with drug and alcohol addiction constitutes an unusual circumstance not commonly faced by individuals who relocate abroad due to the inadmissibility of a spouse.

The record further shows that the applicant's husband suffers from physical health problems, and he contends that they are a result of this prior alcohol and drug abuse. Thus, it is evident that the applicant's husband's continued addiction treatment is a necessary component of maintaining his physical health. While the applicant has not provided detailed information regarding the severity of her husband's physical health problems, the letter from his physician states that his conditions are at an advanced stage. The record supports that the applicant's husband will suffer hardship should he relocate to the Dominican Republic and lose access to the medical professionals who presently provide his physical health care. The AAO acknowledges the applicant's husband's concern for his access to employment in the Dominican Republic, and that he may face challenges in funding necessary medical treatment should he relocate there.

The applicant's husband is a native of Puerto Rico, and thus he would face the challenge of adapting to a new culture in the Dominican Republic should he relocate there. He would further endure separation from his community and activities in the United States. While these challenges are common results when an individual relocates abroad due to the inadmissibility of a spouse, the AAO considers all elements of hardship in aggregate and gives due consideration to these additional hardships.

Considering all elements of hardship in aggregate, should the applicant's husband relocate to the Dominican Republic he will endure extreme hardship.

The applicant has shown that her husband will face extreme hardship should she depart the United States and he remain. As discussed above, the applicant's husband faces significant challenges with substance addiction and his physical health. He clearly expressed that the applicant has served as his primary source of support during his struggles with recovery. The AAO acknowledges that the presence and support of a spouse is of great benefit when facing mental and physical health problems. The applicant's husband's addiction and related physical health problems distinguish the consequences of family separation for him from those ordinarily experienced when spouses reside apart due to inadmissibility.

The record supports that the applicant's husband would face financial hardship should the applicant depart the United States. It is noted that the addiction treatment program in which he participates requires a significant investment of time, which supports his assertion that he depends on the applicant for economic support. While the record lacks sufficient documentation to conclude that the applicant's husband is unable to engage in any employment, it is evident that his treatment places demands on his time and he requires financial resources to meet his household and medical expenses. In a prior statement, the applicant provided that her husband held a stable job that

provided health insurance for both of them, yet the AAO observes that the applicant made this statement prior to her husband's entrance into his addiction treatment program. The applicant's and her husband's 2007 IRS form 1040EZ income tax return reflects that they earned a combined income of \$12,996 for that year. While the record is not clear regarding who earned what portion of that total, it is evident that the applicant and her husband have modest means in the United States, that the applicant works and earns income, and that her husband would benefit significantly from her continued economic contribution to their household.

The applicant's husband expressed that he and the applicant share a close relationship and that he would endure emotional hardship should they become separated. The AAO acknowledges that the separation of spouses often involves significant psychological consequences. As discussed above, the applicant's husband faces unusual circumstances, in that he struggles with addiction and physical health problems. It is evident that he would endure unusual emotional hardship should he become separated from the applicant and attempt to continue his treatment alone.

Considering all elements of hardship to the applicant's husband in aggregate, should the applicant depart the United States and he remain, he will face extreme hardship. Based on the foregoing, the applicant has provided sufficient documentation to show that denial of the present waiver application "will result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States using a fraudulent passport that misrepresented her nationality, and remained for a lengthy duration without a legal immigration status.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen husband will experience extreme hardship if she is prohibited from residing in the United States; the applicant has shown a propensity to work and support her husband who struggles with addiction and health problems, and; the applicant has engaged with her community in the United States through the participation in religious activities.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings regarding an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant also bears the burden of persuasion. See *Matter of Mendez-*

*Moralez*, 21 I&N Dec. at 301 (applicant must show that he merits a favorable exercise of discretion). In this case, the applicant has met her burden that she is eligible for a waiver and she merits approval of her application.

**ORDER:** The appeal is sustained.