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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

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FILE: [REDACTED] Office: HARTFORD Date:

OCT 06 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:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 seeking admission into the United States by fraud or 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 lawful permanent resident husband.

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 August 3, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband will endure extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated August 30, 2007.

The record contains a brief from counsel; statements from the applicant, the applicant's husband, a teacher for the applicant's daughter, a social worker, the godparents of the applicant's daughter, the applicant's friends, a pastor from the applicant's church, and other relatives of the applicant including her brother and nephew; copies of United States passports for the applicant's daughters; copies of birth certificates for the applicant's daughters; copies of documents relating to the applicant's family's banking, taxes, income, and expenses; a copy of the applicant's marriage certificate; a copy of the applicant's husband's lawful permanent resident card, and; a report regarding conditions in Mexico. 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 July 11, 1992, the applicant entered the United States by presenting a lawful permanent resident card that belonged to another individual. On September 15, 1994, the applicant entered the United States by presenting a United States passport with her photograph substituted for that of the true owner. Accordingly, the applicant 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). 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 or her 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 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, counsel contends that the field office director failed to properly consider the hardship the applicant's husband would experience due to the uprooting of a long-term, enduring marriage. *Brief from Counsel* at 1. Counsel asserts that the field office director did not give proper weight to the economic hardship the applicant's husband would experience. *Id.* Counsel cites *Matter of Pilch* at 631 and *Matter of Cervantes-Gonzalez* generally, to stand for the proposition that financial hardship can rise to the level of extreme hardship. *Id.* at 1. Counsel contends that the field office director improperly used the poverty guidelines to assess whether the applicant's husband would endure extreme financial hardship, as the poverty guidelines are not applicable to residents outside of the United States. *Id.* at 2.

Counsel previously asserted that the applicant's husband would be unable to maintain his company while caring for his two children as a single parent. *Prior Statement from Counsel*, dated May 8, 2006. Counsel explained that the applicant's husband does not earn income unless he is working, thus if his work day is shortened his income will decrease causing his family to descend into poverty. *Id.* at 2.

Counsel stated that uprooting the applicant's family would be harsh, as they have lived in the United States for 15 years and have made their lives here. *Id.* Counsel explained that the applicant's daughters have spent their entire lives in the United States, and that they both attend school and have integrated into United States society. *Id.*

The applicant's husband stated that he and the applicant married on December 10, 1991, and that they have two daughters. *Statement from the Applicant's Husband*, dated October 17, 2006. He expressed that he will endure emotional hardship if he is unable to reside with the applicant. *Id.* at 1. He added that he has been self-employed as a landscaper with two employees and that his workload fluctuates depending on the season. *Id.* He explained that the applicant helps him with his business including bookkeeping and writing checks. *Id.* He provided that the applicant runs their household, including paying the bills and doing all of the cooking and cleaning. *Id.* He explained that he and the applicant each take one of their daughters to school in the morning, and that the applicant picks them both up. *Id.* He indicated that he and the applicant are committed to raising their daughters together, and that it is important to him that they both participate in their daughters' lives. *Id.* He noted that he and the applicant both go to parent-teacher conferences. *Id.* He asserted that he cannot maintain two residences, one in Connecticut and one in Mexico, on his income alone. *Id.*

He stated that he cannot travel to Mexico on a regular basis, as being away for extended periods will impact his business and income. *Id.* He asserted that he would be unemployed should he be compelled to close his business. *Id.*

The applicant provided a statement from a family advocate and school counselor, [REDACTED] at her older daughter's school, who was in the ninth grade as of the date of the statement. [REDACTED] stated that the applicant's daughter has a positive relationship and close bond with the applicant, and that it is important for her to continue to have the applicant in the United States. *Statement from [REDACTED]* dated November 1, 2006. [REDACTED] provided that the applicant is a strong participant in her daughter's school, and that she is vested in the care, education, and well-being of her daughters. *Id.* at 1.

The applicant submitted a statement from a school social worker, [REDACTED], for her younger daughter. [REDACTED] attested that the applicant's younger daughter has been raised by two parents who love and care for her, and that she will be devastated if the applicant is compelled to leave the United States. *Letter from [REDACTED]* dated October 20, 2006.

The applicant submitted a letter from the director of her older daughter's school, [REDACTED] who stated that both the applicant and her husband have been active participants in the school and their daughter's education. *Statement from [REDACTED]* dated February 27, 2006.

The applicant provided copies of documents relating to her family's income and expenses. This documentation reflects that her husband's business earned a gross income of \$30,482 in 2004 and \$104,126 in 2005, with a net profit in 2005 of \$32,814.

The applicant provided statements from other friends and relatives who attest that her family is close and that her daughters need her presence in the United States.

Upon review, the applicant has not established that her husband will suffer extreme hardship should the present waiver application be denied. The applicant has not shown that her husband will endure extreme hardship should she depart the United States and he remain. Counsel indicates that the applicant's husband will endure economic hardship. However, the applicant has not provided any updated financial documentation with the present appeal that was filed on or about September 4,

2007. Nor has the applicant provided any documentation to show that her family faces unusual expenses in the United States, or to show what expenses she and her family may incur due to residence in Mexico. Thus, the AAO is limited to the financial documentation that the applicant submitted with the Form I-601 waiver application that addressed her husband's economic circumstances as of 2005 and 2006. The applicant has not provided any clear indication of her husband's income after 2005.

The AAO acknowledges that financial challenges are an important concern when assessing hardship to a qualifying relative, and due consideration is given to economic difficulty when determining the aggregate hardship to an applicant's spouse. However, without adequate documentation, the AAO is unable to properly assess the financial hardship that the applicant's husband may endure in the present matter. Thus, the applicant has not submitted sufficient explanation or documentation to support that her husband will face significant economic hardship should the applicant depart the United States and he remain.

As noted above, direct hardship to the applicant's daughters does not serve as a basis for a waiver under section 212(i) of the Act. However, the AAO has carefully examined the documentation in the record that addresses hardships that the applicant's daughters would face in order to determine the impact their difficulty would have on the applicant's husband. Individuals associated with the applicant's daughters' educational activities state that the applicant and her husband are actively involved with their daughters' academic pursuits and lives. The applicant's friends and relatives attest that the applicant's family is close and that the applicant's daughters will endure significant emotional hardship should they become separated from the applicant. The AAO acknowledges that children often face significant emotional difficulty when separated from a parent due to inadmissibility, and that the applicant's daughters will face substantial challenges should they reside apart from the applicant. However, the applicant has not provided statements from her daughters, and she and her husband have not described the consequences their daughters will face. While it is evident that the applicant and her husband play a very active role in their daughters' lives, the record does not sufficiently distinguish the hardship their daughters would face from those commonly expected when children reside apart from a parent. The applicant has not established that her daughters will face circumstances that elevate her husband's hardship to an extreme level.

The applicant's husband indicated that he would be unable to care for his two daughters while maintaining his business activities. The AAO recognizes that acting as a single parent for two children presents significant emotional, financial, and physical challenges. The applicant's daughters are currently ages 11 and 17. The applicant has not shown that her 17-year-old daughter requires close supervision such as childcare services. Nor has the applicant explained whether her husband has friends or relatives in the United States who may provide assistance to him should he require it. While it is understood that he has responsibility for his company in order to provide income for his family, the record does not show that he would be unable to continue to operate his business while caring for his two daughters. Thus, the applicant has not established that her husband would face unusually difficult circumstances should he reside with their daughters in the United States without her.

The applicant's husband expressed that he is close with the applicant and that he will suffer direct emotional hardship should he become separated from her. Counsel emphasizes that the applicant and

her husband have been married for a lengthy duration, totaling approximately 20 years. The record shows that the applicant's husband will face considerable emotional difficulty should he live apart from the applicant. Yet, the applicant has not articulated factors that distinguish her husband's psychological difficulty from that which often occurs when an individual resides apart from a spouse due to inadmissibility.

Counsel distinguishes the facts of the present matter from those under consideration in cases cited by the field office director. *Brief from Counsel* at 2. Counsel states that in *Matter of Ngai*, 19 I&N Dec. 245 (Commissioner 1984), an applicant was unable to prove that her deportation from the United States would cause extreme hardship to her husband due to the fact that they had been voluntarily separated for 28 years with no plans to reunite. *Id.* Counsel states that, in the present matter, the applicant and her husband were married in 1991 and the hardship they experienced was the basis for her entries to the United States using misrepresentation. *Id.* Counsel provides that in *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the applicant and the qualifying relatives had no financial ties, in contrast to the present matter. *Id.* Counsel indicated that in *Matter of W-*, 9 I&N Dec. 1 (BIA 1960), the BIA considered a brief marriage in which there were no children, and that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), deportation actually resulted in reuniting the respondent's family in Poland. *Id.*

The AAO recognizes the distinctions made by counsel between the present matter and those cited by the field office director. It is first noted that the field office director cited the referenced cases to stand for general propositions of law, and not as examples of facts that are similar to those presently under consideration. Further, counsel has not cited precedent court or administrative decisions in which extreme hardship was found based on facts that are similar to those faced by the applicant's husband. The AAO must assess the facts of each waiver application individually, and is limited to the explanation and evidence submitted by the applicant. As discussed above, the applicant has not distinguished her husband's challenges from those commonly expected when spouses reside apart due to inadmissibility.

Counsel states that evidence was previously submitted to support that "married couples are substantially better off and that families raised by both parents are substantially better off." *Brief from Counsel* at 2. Counsel asserts that the applicant's husband "will be in better health, have better mental health, will be happier, live longer, and do better economically," yet that the field office director did not address the supporting evidence. *Id.* However, the material referenced by counsel consists of brief information from a website regarding a radio station's pro-marriage campaign, including conclusory statements regarding the benefits of marriage. *Marriage Works Campaign Documentation*, printed May 4, 2006. While the radio station's conclusions are followed by a list of five academic studies, the studies are not discussed such to establish that they support the conclusions. *Id.* The applicant has not provided copies of any of the studies or other credible reports that support counsel's assertions.

All stated elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. Based on the forgoing, the applicant has not provided sufficient explanation or documentation to show that her husband will endure extreme hardship should he remain in the United States without her.

The applicant has not shown that her husband will endure extreme hardship should he relocate to Mexico to maintain family unity. The applicant and her husband have not stated that her husband will face hardship should he reside in Mexico. The only information regarding difficulty the applicant's husband may endure upon relocation consists of a brief statement from counsel submitted with the Form I-601 application. Counsel stated that the applicant and her husband have resided in the United States for a lengthy duration and that their daughters have only lived in the United States. Yet, these factors are commonly faced by families who relocate abroad due to inadmissibility.

The record shows that the applicant's husband operates a business in the United States, and it is understood that he would face challenges in arranging his business and employment affairs should he depart the United States. Yet, the applicant has not provided any information about the business or financial consequences her husband would face should he join her in Mexico.

The applicant previously provided a 2006 report from the United States Department of State regarding human rights conditions in Mexico. However, counsel or the applicant have not discussed the report or indicated whether or how the applicant's husband would be affected by human rights practices in Mexico.

In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's husband may endure. In proceedings regarding a 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. Based on the foregoing, the applicant has not articulated hardships that her husband would face in Mexico that rise to an extreme level.

Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as contemplated by 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 the present matter, the applicant has not met her burden to prove that she 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.