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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: DENVER Date: OCT 15 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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ethiopia 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 by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 5, 2008.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated January 28, 2009.

The record contains a brief from counsel; statements from the applicant and his wife; reports on conditions in Ethiopia and Eritrea; an affidavit from an expert on the [REDACTED] which includes Ethiopia and Eritrea; a form from a medical center confirming that the applicant's wife was pregnant as of January 8, 2009; a study of the social stigmatization of single women; studies on the negative effects of stress; a psychological evaluation of the applicant's wife; tax records for the applicant and his wife; a letter from the applicant's wife's employer; a copy of a power bill for the applicant and his wife; copies of marriage records for the applicant and his wife, and; a copy of the applicant's wife's naturalization certificate. 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 the applicant purchased a fraudulent passport in the Netherlands under the name [REDACTED]. On September 21, 2004, he used the passport to enter the United States pursuant to the Visa Waiver Program. Accordingly, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides, in pertinent part:

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

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

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an

unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, the applicant states that his family has suffered harms in Ethiopia from the Ethiopian government. *Statement from the Applicant*, dated January 22, 2009. He explains that his mother was born in [REDACTED] and that she is of [REDACTED]. *Id.* at 1. He provides that his mother was permitted to reside in [REDACTED], yet she was required to report to police each month as a registered [REDACTED]. *Id.* He states that authorities took his mother in 2006 and that his family has received no word from her since. *Id.* He indicates that his father suffered a stroke shortly after and that he is partially paralyzed and unable to work. *Id.* He adds that his family has not heard from his brother who was taken by Eritrean soldiers in 1998, and his other brother lives in hiding to avoid Ethiopian authorities. *Id.*

The applicant explains that he was born in [REDACTED] a contested border region of [REDACTED] and [REDACTED] that was devastated in the war between the countries. *Id.* at 2. He states that he and his family had businesses in [REDACTED] but they were lost and the [REDACTED] government confiscated his cotton farm. *Id.* at 1-2. He provides that [REDACTED] authorities arrested, jailed, and mistreated him on three occasions in 1998, and that he was frequently arrested and interrogated afterwards until he fled [REDACTED] in 2004. *Id.* at 2.

He expresses that he and his wife are excited about having their first child, but that his situation is causing his wife stress and anxiety. *Id.* at 4.

The applicant’s wife states that she was born in [REDACTED] on October 27, 1978, and that she immigrated to the United States at age 18. *Statement from the Applicant’s Wife*, dated January 22, 2009. She provides that her mother resides in [REDACTED] but that she is immigrating to the United States pursuant to an approved Form I-130 relative petition. *Id.* at 1. She indicates that her younger brother and two sisters will remain in [REDACTED] with her grandmother until they can immigrate to the

United States. *Id.* She states that her life is in the United States, and that her ties to [REDACTED] are disappearing. *Id.*

The applicant's wife discusses her family's struggles in [REDACTED], including the facts that [REDACTED] authorities took her mother's home and assets and deported her to [REDACTED]. *Id.* at 2. She notes that she has become the sole source of economic support for her mother, grandmother, and siblings. *Id.* She asserts that she will have little chance of finding employment in [REDACTED] to assist her family, and thus she needs to remain in the United States. *Id.* at 2-3. She adds that her financial burden will increase should the applicant return to [REDACTED], as he will be compelled to remain in hiding and will be unable to support himself. *Id.* at 3.

The applicant's wife indicates that she is pregnant, and that she will face further economic difficulty should she lose the applicant's assistance. *Id.* She notes that she works long hours, yet she will be unable to do so with a child due to the cost of childcare and her desire to directly care for the child. *Id.*

The applicant's wife discusses the applicant's family's difficulties in [REDACTED], and she indicates that she fears returning there. *Id.* at 4-5. She provides that she cannot return to Ethiopia due to her pregnancy and her connection to the applicant. *Id.* at 5.

The applicant's wife expresses that she will lose the love of her life if the applicant is compelled to return to [REDACTED]. *Id.* She states that their child will lose his father. *Id.* She indicates that she fears that [REDACTED] authorities will kill or imprison the applicant for life. *Id.* She provides that she wishes to have children, but that anxiety over the future dampens her joy. *Id.* at 6. She asserts that separating her from the applicant will be cruel. *Id.* She notes that her father died when she was one year old, and that she does not wish for her own child to endure the pain of being fatherless. *Id.* The applicant's wife indicates that she will struggle financially as a single mother without the applicant due to her limited education and training, and the applicant's inability to assist her from Ethiopia. *Id.* She adds that she and their child would be unable to visit the applicant abroad due to economic and safety concerns. *Id.* She expresses that the possibility of being separated from the applicant causes her depression and anxiety. *Id.* at 6-7.

The record contains an evaluation of the applicant's wife conducted by a licensed psychologist, [REDACTED]. [REDACTED] discusses the applicant's wife's family history and their struggles in [REDACTED] dated November 3, 2007. [REDACTED] indicated that the applicant's wife fears that the applicant will be jailed or killed should he return to [REDACTED]. *Id.* at 3-4. She described activities that the applicant and his wife share, and she asserted that they are close. *Id.* at 3. [REDACTED] added that the applicant's wife worries about the applicant's depression due to his inability to legally work. *Id.* at 4. [REDACTED] concluded that both the applicant and the applicant's wife are struggling with anxiety and depression, and that the applicant has symptoms consistent with Post-Traumatic Stress Disorder. *Id.* at 8.

Counsel discusses the difficulties experienced by the applicant's and the applicant's wife's families in [REDACTED]. *Brief from Counsel* at 4-10. Counsel cites numerous articles and reports to support that economic, health, and human rights conditions in [REDACTED] are poor and pose a threat to the applicant and his wife should they reside there. *Id.* at 4-8, 10, 13-14.

Counsel notes that the applicant has significant family ties to the United States, including his wife, sister, niece, and nephew. *Id.* at 12. Counsel asserts that the applicant's wife's family ties in Ethiopia are diminishing, as her mother and siblings will soon immigrate to the United States. *Id.*

Counsel states that the applicant and his wife will face extreme poverty should they reside in Ethiopia. *Id.* at 13. Counsel notes that the applicant is of mixed [REDACTED] heritage, and that he would face severe persecution in [REDACTED] as a result. *Id.* at 14-15. Counsel asserts that the applicant's wife would endure emotional hardship should the applicant be compelled to return to [REDACTED] and face a risk of harm or death there. *Id.* at 15.

Counsel emphasizes that the applicant's wife's financial situation is precarious, as she supports her family in [REDACTED] through work in unskilled positions such as a parking lot attendant and banquet server. *Id.* at 16. Counsel contends that the applicant's wife will face significant economic difficulty as a single mother once her child is born should the applicant depart the United States. *Id.* 16-17.

Counsel asserts that the applicant's wife will face psychological hardship should she be separated from the applicant. *Id.* at 17. Counsel states that family unity in [REDACTED] is not a possibility for the applicant's wife due to the risks and challenges she would face there. *Id.* Counsel contends that the applicant's wife will experience isolation, chronic anxiety, and stress should she lose the opportunity to reside as a married couple with the applicant. *Id.* at 18-19.

Counsel adds that the applicant warrants a favorable exercise of discretion. *Id.* at 19.

Upon review, the applicant has shown that his wife will suffer extreme hardship should he be compelled to depart the United States. The applicant has shown that his wife will endure extreme hardship should she join him in [REDACTED] to maintain family unity. The AAO has carefully reviewed the record regarding the difficulties that the applicant's and his wife's families have experienced in [REDACTED]. The AAO has further examined the numerous reports on conditions in [REDACTED] particularly the plight of those of mixed Eritrean-Ethiopian heritage. *Situation Report, A [REDACTED]: [REDACTED]* Institute for Security Studies, dated December 1, 2008; *Report from [REDACTED]*, dated August 24, 2005; *2009 Human Rights Report: [REDACTED]*, U.S. Department of State, dated March 11, 2010. The record contains ample support to show that based on the applicant's claims, he would face significant difficulty in [REDACTED] including economic challenges and a risk of harm from government authorities. *Id.*; *The World Factbook: [REDACTED]* U.S. Central Intelligence Agency, dated September 29, 2010. It is evident that the applicant's wife would share in these difficulties which would create substantial emotional hardship for her.

The severe conditions in [REDACTED] combined with the history of persecution the applicant's and his wife's families claimed to have suffered there, constitute unusual circumstances not commonly faced by individuals who relocate abroad due to the inadmissibility of a spouse. The record supports that the applicant's wife will endure other elements of hardship should she relocate to [REDACTED], including separation from her country and community, the loss of her employment, and a serious impact on her ability to financially assist her family in [REDACTED] whom she claims rely on her support.

All elements of hardship to the applicant's wife, should she relocate to [REDACTED], have been considered in aggregate. Based on the foregoing, the applicant has shown that his wife will suffer extreme hardship should she join him in [REDACTED] to maintain family unity.

The applicant has shown that his wife will suffer extreme hardship should he return to [REDACTED] and she remain in the United States. As discussed above, the applicant would face extreme challenges in [REDACTED] including economic hardship and a return to conditions in which he claims he previously suffered persecution by government authorities. It is evident that the serious threats to the applicant's safety and well-being would create substantial emotional hardship for his wife. The risk of harm to the applicant elevates his wife's psychological difficulty to a level not commonly endured by individuals who become separated from a spouse due to inadmissibility.

The fact that the applicant's wife was pregnant with their first child as of January 8, 2009 further contributes to her emotional hardship. The AAO recognizes the psychological challenges created for the applicant's wife by having the applicant relocate to dangerous conditions at a time when her physical, emotional, and financial needs are escalating.

The applicant's wife expressed that she is close with the applicant and that she does not wish to be separated from him. It is evident that the experience of family separation itself would cause psychological hardship for the applicant's wife. As discussed above, she would endure severe difficulty should she relocate to [REDACTED]. The record further supports that she earns modest income and would be unlikely to have the capacity to visit the applicant outside the United States with regularity. As a result, she would face the emotional hardship of a lengthy or permanent separation from her husband.

The applicant has not provided the most current tax, income, or expense records for his wife, thus the AAO is unable to fully assess the financial consequences she would endure should he depart the United States and she remain. However, she was employed as a parking lot attendant as of February 1, 2006 at a rate of \$8.00 per hour, and it is understood that having a child has an impact on one's ability to engage in employment. The AAO acknowledges that the applicant's wife has economic concerns which contribute to her emotional challenges.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has established that his wife will suffer extreme hardship should he return to [REDACTED] and she remain. Thus, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to his wife, 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 and false identity.

The positive factors in this case include:

The applicant has explained the exigent circumstances that caused him to flee [REDACTED] and ultimately enter the United States using misrepresentation, and he affirmatively presented himself to United States Citizenship and Immigration Services (USCIS), revealed the manner of his entry, and applied for asylum; the record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen wife would experience extreme hardship if he is prohibited from residing in the United States, and; the applicant will face extreme circumstances should he be returned to [REDACTED].

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

ORDER: The appeal is sustained.