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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

[REDACTED]

Office: BALTIMORE

Date:

OCT 19 2010

IN RE:

[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:

[REDACTED]

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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the District Director, Baltimore, Maryland. An appeal was subsequently dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, but the appeal will be dismissed. The waiver application will be denied.

The applicant is a native and citizen of the [REDACTED] who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and children.

The record reflects that on April 30, 2004, the applicant filed an Application for Waiver of Ground of Excludability (Form I-601) with the District Office. The director denied the applicant's Form I-601 application on January 23, 2006, concluding that the applicant failed to meet her burden in establishing that the refusal of her admission would result in extreme hardship to her U.S. citizen spouse. On appeal, counsel asserted that the director failed to consider the psychological effect of the applicant's departure on her children. On November 19, 2009, the AAO dismissed the appeal, finding that the applicant failed to establish extreme hardship to her spouse if she is refused admission to the United States.

On the present motion, counsel submits additional evidence and asserts that the applicant's spouse will suffer extreme hardship if the applicant is removed from the United States.

In support of the motion, the record contains: a psychological evaluation from [REDACTED] a marriage certificate for the applicant and her spouse; birth certificates for the couple's three children; medical reports on behalf of the applicant; and a 2008 tax return and W-2 forms for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

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

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the

Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that on September 6, 1993, the applicant presented a fraudulent passport and visa for admission to the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure entry into the United States by willful misrepresentation. The applicant has not disputed her inadmissibility on the present motion.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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

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

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

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a

qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

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

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

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

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S.*

*v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to [REDACTED], 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 motion, counsel asserts that the applicant’s spouse needs the applicant to remain in the United States to assist with caring for their three U.S. citizen children. Counsel states the applicant helps her spouse with managing their business, a carryout restaurant. Counsel states that the applicant’s spouse suffers from severe anxiety and depression arising from the prospect of the applicant’s removal to [REDACTED].

The AAO finds that the applicant has established that her family would suffer financial hardship should she relocate to [REDACTED] and they remain in the United States. The applicant is mother of three minor children. Birth certificates in the record show that the applicant and her spouse have a ten-year-old U.S. citizen child, [REDACTED], a eight-year-old U.S. citizen child, [REDACTED], and a four-year-old U.S. citizen child, [REDACTED]. The record contains tax documentation that reflects the applicant’s spouse is the owner of Top China restaurant. The applicant’s spouse stated in his statement filed with the waiver application that his wife takes care of the cash register, cooks, packs orders, and deals with miscellaneous matters. He noted that since he has a carry-out restaurant, he does not pay high wages, and therefore, it is hard to find workers. According to the applicant’s 2008 tax return, she and her husband earned a combined gross income of [REDACTED] for their employment at

Top [REDACTED]. The U.S. Department of Health and Human Service's 2008 federal poverty guidelines show that a family of five earning less than [REDACTED] meets the federal measure of poverty. The AAO observes that should the applicant relocate to [REDACTED] the applicant's spouse would have to hire an additional employee to assist with his restaurant. Although the applicant has not discussed her child care arrangements while she is working at the family business, the AAO notes that her absence will likely result in her spouse needing additional child care for their three minor children. The applicant's absence could therefore result in a significant drop in family's household income, causing them to fall below the federal poverty line.

On appeal, former counsel asserted that the director failed to consider the psychological effect of the applicant's departure on her children. Former counsel stated that the director failed to properly consider the hardship the applicant's spouse would suffer "having to care for three motherless children of such a tender age." Former counsel contended that the director's decision was capricious because it did not fully consider this situation. In the statement the applicant's spouse filed with the waiver application, he stated that if his wife is sent back to [REDACTED], his daughters "will cry and look for their mother everyday." He stated that he cannot imagine the future of a child who does not have a mother with her when she grows up. He stated that his daughters are still young and will not understand the reason their mother is gone. The AAO recognizes the emotional challenges the applicant's spouse will face should he be in the position of raising three children alone upon separation from the applicant.

All elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. Based on the foregoing financial and emotional hardships, the applicant has established that her husband will suffer extreme hardship should she return to [REDACTED] and he remain in the United States.

Although the applicant has established extreme hardship to her spouse upon separation, the applicant must still demonstrate that her spouse would suffer extreme hardship if he relocated to [REDACTED] to maintain family unity.

On motion, counsel refers to a psychological evaluation of the applicant's spouse from [REDACTED]. Counsel points to the following determinations from [REDACTED] evaluation: the applicant's spouse would suffer extreme hardship upon relocation to [REDACTED] because he and his children would be faced with cultural readjustment; the applicant and his spouse fear persecution in [REDACTED] for violation of the one-child policy; and the applicant's spouse would be forced to separate from his U.S. citizen mother and children if he relocated to [REDACTED]. Counsel notes that the applicant has chronic inflammation of her colon.

[REDACTED] evaluation concludes that the applicant's spouse is suffering from clinical depression and that he will suffer extreme hardship upon separation from the applicant or upon relocation to [REDACTED]. Although [REDACTED] evaluation is respected and valuable, the AAO notes that the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the clinical depression suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration

commensurate with an established relationship with a [REDACTED] thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

With regard to assertions of cultural hardship upon relocation, the AAO notes that the applicant's spouse is a native of [REDACTED]. He should presumably have less difficulty readjusting to the language and culture of [REDACTED]. Notably, the record shows that the applicant's spouse's supporting statement was written in [REDACTED], indicating his fluency in the [REDACTED] language.

The psychological evaluation indicates that the applicant's children are not fluent in [REDACTED]. Since the applicant's children are not qualifying relatives in these proceedings, hardship to them will be considered only insofar as it results in hardship to the applicant's spouse. The AAO recognizes that the applicant's children may struggle with gaining fluency in the Chinese language, but the applicant has failed to demonstrate the extent to which this will result in hardship to the applicant's spouse.

The AAO acknowledges the hardships resulting from the one-child policy in [REDACTED]. However, the applicant has not submitted reports or other documentation to show that the applicant's spouse would face persecution or discrimination in [REDACTED] as a consequence of having more than one U.S.-born, U.S. citizen children. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In regard to the applicant's spouse's family ties in the United States, [REDACTED] evaluation states that the applicant's spouse's mother and brother are residents of the United States. While family ties are an important factor to be considered when assessing extreme hardship, the applicant's spouse has not provided evidence of his family members' identity and residence in the United States. Nor has he explained his relationship with his mother and brother, and how often he sees them. Furthermore, there is nothing in the record to establish that the applicant's spouse would relocate to China without his children. The applicant has not provided evidence that she has or is intending to arrange for guardianship of her children in the United States should she and her spouse relocate to China.

Finally, the applicant has failed to show that she is suffering from a medical condition that will cause her husband hardship upon relocation to China. The medical documentation submitted with the motion consists of a [REDACTED] which shows that the applicant is suffering from moderate chronic inflammation of the small bowel mucosa. The report provides no other information on the significance of this diagnosis. There is nothing in plain language from a health care provider explaining the impact of the applicant's condition on her daily activities, the type of treatment or assistance she requires, and the prognosis of the condition. There is no indication that the applicant could not be successfully treated in China.

All elements of hardship to the applicant's husband, should he relocate to China, have been considered in aggregate. While the record shows that the applicant's spouse will face some difficulty upon relocation to China, the record does not contain sufficient evidence to show that the

hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

In conclusion, although the record reflects that the applicant's spouse would suffer extreme hardship upon separation from the applicant, it does not demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to China to maintain family unity. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.