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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
and Immigration
Services

[REDACTED]

H5

FILE: [REDACTED] Office: SAN JOSE, CALIFORNIA

Date: OCT 22 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the [REDACTED] who entered the United States on or about January 8, 1988. She 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 to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and her mother, a United States citizen, is her petitioner. 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.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated April 10, 2008.

On appeal, the applicant's attorney provided a brief in support of the applicant's appeal. In the brief, the attorney asserted that the applicant's mother would experience medical hardships as a result of the separation from her daughter. The brief also discusses the difficult life experiences of the applicant, such as the loss of her father as a child and the responsibilities she took on as the eldest child. In addition, the brief indicated that the applicant's mother would face hardships upon relocating to the [REDACTED] including leaving her family in the United States, suffering financially, losing her health insurance and facing "conditions in the [REDACTED]

The record contains the following evidence; the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), a doctor's letter regarding the qualifying relative's right arm, letters from the U.S. Department of Labor regarding the qualifying relative's worker's compensation claim, a letter scheduling a "procedure," an affidavit from the qualifying relative, laboratory results for the qualifying relative, discharge instructions for the qualifying relative's husband after his cardiac stent surgery, tax returns, the qualifying relative's license for operating a residential elderly facility, birth certificates, drivers license's for the applicant and qualifying relative and the Application to Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with the application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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, 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. The applicant's mother 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 the [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.

In the present case, the record reflects that the applicant obtained a F-1 student visa in 1988 from the U.S. Embassy in [REDACTED] in order to enter into the United States. However, the applicant stated under oath in her adjustment of status interview that she never intended to attend school, but rather to join her mother and siblings in the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring entry to the United States through fraud or misrepresentation.

The applicant’s qualifying relative is her mother, and as aforementioned, her Form I-130 has already been approved.

The evidence provided which specifically relates to the applicant’s hardship includes Form I-601, Form I-290B, a doctor’s letter regarding the qualifying relative’s right arm, letters from the U.S. Department of Labor regarding the qualifying relative’s worker’s compensation claim, a letter scheduling a “procedure,” an affidavit from the qualifying relative, laboratory results for the qualifying relative, discharge instructions for the qualifying relative’s husband after his cardiac stent surgery, tax returns, the qualifying relative’s license for operating a residential elderly facility and drivers license’s for the applicant and qualifying relative. The entire record was reviewed and considered in rendering a decision on the appeal.

In the appeal brief, the attorney for the applicant contends that the qualifying relative will experience medical hardships as a result of her separation from her daughter. In addition, the attorney asserts that the applicant's mother would face hardships upon relocating to the [REDACTED] including leaving her family in the United States, suffering financially, losing her health insurance and facing "conditions in the [REDACTED]" The brief also discusses the difficult life experiences of the applicant, such as the loss of her father as a child and the responsibilities she faced as the eldest child. Although we recognize that the applicant has endured difficult life experiences, it is only relevant for this waiver determination to the extent that it has affected the applicant's qualifying relative and created a hardship for her.

The AAO finds that the applicant's mother will not suffer extreme hardship as a consequence of being separated from the applicant. The applicant's attorney claims that the qualifying relative's health will suffer if her daughter is not in the United States to care for her. In the appeal brief, the applicant's counsel indicates that the applicant "daily monitors her mother's diet and medication." The applicant's mother, in her affidavit, states that she has hypertension and high cholesterol. She also indicates that the applicant "calls [her] almost every day to remind [her] about [her] diet" and draws and examines her blood every three months. In addition, the applicant's mother claims that her daughter corrected a medical mistake concerning her medication. The applicant also submitted laboratory results to confirm her mother's cholesterol issues. The applicant also provided various documents regarding her mother's worker's compensation claims, including a letter scheduling a "procedure" which was not specified. However, this documentation failed to explain how the applicant would be able to assist her mother to alleviate any of her issues or to show that she has already helped her mother with problems relating to her arm, and to demonstrate how her mother would suffer a hardship without her daughter's help. Further, the evidence provided relating to the qualifying mother's issues with her arm does not even appear to significantly alter her daily activities, as to warrant assistance. The applicant's attorney further claims that the qualifying relative's husband is unable to assist the applicant's mother because of his age and his "own physical condition." To corroborate the qualifying husband's health condition, the applicant provides discharge instructions for his cardiac stint. This evidence fails to indicate that he would be unable to care for the qualifying relative. In fact, the instructions appear to demonstrate that 5-7 days following the qualifying relative's husband's procedure, he would lead a very normal life. As such, it appears that the qualifying relative's husband could assist her, if necessary. Nonetheless, according to the record, the applicant's qualifying relative has health insurance and her health care providers are able to care for her conditions, draw blood, and follow-up on her diet and medication. Therefore, the qualifying relative's separation from her daughter would not cause her to encounter extreme hardships with regard to her health.

Furthermore, the applicant submitted her driver's license and also her mother's driver's license. The licenses indicate that they live in separate residences, over 400 miles away from each other. Therefore, despite their distance from each other, they are able to communicate with each other. Presumably, they can remain in contact if the applicant returns to the [REDACTED] as well by telephone, email or mail. Moreover, the fact that the applicant and her mother live at a great distance from one another in the United States suggests that they live independently of each other and would not suffer from extreme hardship due to separation.

Moreover, the record is silent regarding whether the applicant's inadmissibility will cause a financial hardship on the applicant's mother. Although the applicant's mother states that the applicant helped her other children pay for their educations, and that presumably such financial assistance was needed by the qualifying relative at that time, there is no evidence to indicate that the qualifying relative currently relies on the applicant's financial help or that she would need financial support in the future. No financial documentation of the mother's expenses, such as mortgage payments and/or rent, car payments or credit card obligations, was provided to demonstrate that the separation may pose a financial burden upon the qualifying mother consistent with a finding of an extreme hardship. Further, the tax returns of the applicant's qualifying relative appear to indicate that she and her spouse are financially independent from the applicant.

Likewise, the applicant failed to demonstrate that her qualifying relative would suffer an extreme hardship in the event that she relocates to the [REDACTED]. The applicant's attorney contends that the qualifying relative's husband has "serious medical issues" and that "his treatment is with United States medical providers and it would be unconscionable for her mother to either abandon her husband or move him to the [REDACTED]." However, there was no documentation indicating that the qualifying relative's spouse had serious medical issues, or that he could not receive medical treatment in the [REDACTED]. As aforementioned, the only evidence provided regarding the qualifying relative's spouse's medical condition was discharge instructions following a cardiac stint procedure. While the assertions made by the applicant's attorney are evidence and have been considered, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

The attorney for the applicant also indicates that the qualifying relative would have to leave behind her two daughters and six grandchildren if she relocated to the [REDACTED]. However, she has a son who lives in the [REDACTED] and, if the applicant lived there as well, she would still be living in the same country as two of her four children. Further, the record is silent regarding whether the qualifying relative has any other family remaining in the [REDACTED] and the AAO is thus unable to ascertain whether and to what the extent she would receive assistance from family members should she relocate to the [REDACTED]. Moreover, the record reflects that the applicant's mother is a native of the [REDACTED]. She is therefore unlikely to experience the hardships associated with adjusting to a foreign culture.

The applicant's mother is also self-employed, and runs her own business along with her spouse, in which they are profitable. Her having to leave behind her business may pose a financial hardship. However, there were no claims made regarding a potential financial hardship if the qualifying relative were to relocate to the [REDACTED]. Presumably, either her husband or one of her daughters could run her business while she is abroad, or she could open a similar business in the [REDACTED]. As such, the current record does not establish that the applicant's mother would experience extreme hardship upon relocating to the [REDACTED].

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen mother as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.