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U. S. Citizenship and Immigration Services
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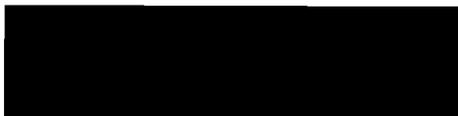


FILE: [REDACTED] Office: BALTIMORE, MARYLAND Date: OCT 28 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you,

Tariq Syed
for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of [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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and their children.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 9, 2008.

On appeal, the applicant's spouse states that she would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Statement from the applicant's spouse*, undated.

In support of the waiver the record includes, but is not limited to, statements from the applicant's spouse; educational documentation for the applicant's child; medical documentation for the applicant's spouse; bank statements; a credit card statement; tax statements; a W-2 Form for the applicant's spouse; a property deed; documentation regarding the applicant's business; statements from family members; and statements from friends. 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.

The record reflects that the applicant admitted to having gained admission to the United States through the use of a false passport. *Form I-601, Application for Waiver of Grounds of Inadmissibility; Form I-485, Application to Register Permanent Residence or Adjust Status*. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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.

If the applicant’s spouse joins the applicant in [REDACTED] the applicant needs to establish that his spouse will suffer extreme hardship. The applicant’s spouse was born in [REDACTED]. *United States passport*. Her father resides in [REDACTED] *Form G-325A, Biographic Information sheet, for the applicant’s spouse*. Her mother resides in [REDACTED] *Id.* The applicant’s spouse has three children. *Form I-601, Application for Waiver of Grounds of Inadmissibility; Birth certificates*. The applicant’s spouse states that she was diagnosed with [REDACTED] and is in need of surgery. *Statement from the applicant’s spouse*, undated. Medical documentation included in the record confirms that the applicant’s spouse has been diagnosed with [REDACTED] *Statement from [REDACTED]* dated April 30, 2008. While the medical documentation does not address whether the applicant’s spouse is in need of surgery, it does note that close follow-up care is important. *Id.* While the record does not address whether satisfactory healthcare access and treatment exist for the applicant’s spouse in [REDACTED] the AAO acknowledges that she has been receiving care in the United States and is in need of follow-up attention. The applicant’s spouse notes that she has a child who has been diagnosed as having a [REDACTED] *Statement from the applicant’s spouse*, undated. Her child has been placed in a [REDACTED] every day. *Id.* Documentation in the record notes that the applicant’s child has been placed in an Individualized Education Program (IEP) where he has a [REDACTED] and has been receiving treatment. *Individualized Education Program (IEP) notes*, dated April 10, 2008. The AAO acknowledges the added difficulties placed upon the applicant’s spouse in uprooting a child with [REDACTED] consistent treatment in the United States. When looking at the aforementioned factors, particularly the health conditions of the applicant’s spouse as documented by a licensed healthcare professional, the consistent care she has been receiving in the United States, the documented disability of her child, the documented educational assistance her child is receiving in the United States, the having to care for three children in a foreign country, and the separation of the applicant’s spouse from her

mother in the United States, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in [REDACTED]

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in [REDACTED] *United States passport*. Her mother resides in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse states that she was diagnosed with [REDACTED] and is in need of surgery. *Statement from the applicant's spouse*, undated. She has three children and notes that it will be difficult for her and the children to go through with the surgery and recovery if she is separated from the applicant. *Id.* Medical documentation included in the record confirms that the applicant's spouse has been diagnosed with [REDACTED] *Statement from [REDACTED]* dated April 30, 2008. While the medical documentation does not address whether the applicant's spouse is in need of surgery, it does note that close follow-up care is important. *Id.* The applicant's spouse states that she has not been feeling well lately. *Statement from the applicant's spouse*, undated. She notes that she and the applicant take turns [REDACTED] *Id.* She states that if the applicant is not in the United States, she will not be able to do all of this by herself. *Id.* The applicant's spouse notes that she has a child who has been diagnosed as having a speech and language impairment. *Statement from the applicant's spouse*, undated. Her child has been placed in a special class and meets with a [REDACTED] every day. *Id.* Documentation in the record notes that the applicant's child has been placed in an [REDACTED] where he has a [REDACTED] and has been receiving treatment. [REDACTED] *notes*, dated April 10, 2008. The applicant's spouse notes that the applicant has helped her child everyday with his school work and that if he is not around, it will be very difficult for her child to keep improving. *Statement from the applicant's spouse*, undated. The applicant's spouse also asserts that she and the applicant have a lot of debt and that it will be difficult for her without the applicant. *Id.* The record includes a credit card statement showing an expense for the applicant. *Credit card statement*. The applicant's spouse also notes that she is a full-time student who is studying to be a [REDACTED]. *Additional statement from the applicant's spouse*, undated. She notes that her full-time school and taking care of the children make it difficult for her to work, and that the applicant pays all of the bills. *Id.* While the record does not include documentation showing that the applicant's spouse is in school full-time, the AAO acknowledges her care for three children and notes that the record includes a W-2 Form for the applicant's spouse showing she earned \$2097.65 in 2006. *W-2 Form*. When looking at the aforementioned factors, particularly the health conditions of the applicant's spouse as documented by a licensed healthcare professional, the difficulties of being a single parent to three children, one of whom has a documented disability, and the financial difficulties of the applicant's spouse, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's misrepresentation for which he now seeks a waiver and period of unauthorized employment. The favorable and mitigating factors are his

United States citizen spouse, three United States citizen children, the extreme hardship to his spouse if he were refused admission and his supportive relationship with his spouse and children as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.