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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]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: **OCT 29 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 PETITIONER:

[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.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, 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 sought to procure admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is married to a Lawful Permanent Resident and is the derivative beneficiary of an approved Petition for Alien Worker. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband.

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Field Office Director* dated May 22, 2008.

On appeal, counsel for the applicant asserts that the applicant's husband would suffer extreme hardship if the applicant were forced to depart the United States. Specifically, Counsel states that the applicant's husband would lose his recently obtained permanent residence and face financial hardship if he relocated to [REDACTED] and would lose the home where he and the applicant reside with their children, and he would lose his wife of fourteen years if he remained in the United States without the applicant and would still lose the home without the applicant's income. *Counsel's Brief in Support of Appeal* at 4-7. Counsel further asserts that the applicant's husband would face other hardships if he remained in the United States without the applicant, including difficulty raising their two children on his own or emotional hardship if the children relocate to [REDACTED] with the applicant. *Brief* at 8-9. In support of the appeal counsel submitted affidavits from the applicant and her husband, letters of support from the applicant's employer and the pastor of her church, school records and medical records for the applicant's son and daughter, a copy of a deed and mortgage documents for the home owned by the applicant and her husband, copies of utility bills and credit card statements, articles concerning divorce rates in the United States, information on foreclosures and the mortgage crisis in the United States, and information on conditions in [REDACTED]. The entire record was reviewed and considered in arriving at 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:

- (1) The [Secretary] may, in the discretion of the [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 [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 husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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

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

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

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

family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

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

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

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

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of the 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.

In the present case, the record reflects that the applicant is a thirty-seven year-old native and citizen of [REDACTED] who last entered the United States in about February 1996 without inspection after having been ordered excluded and deported from the United States. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to gain admission to the United States on February 7, 1996 by presenting a Form I-586, Border Crossing Card, belonging to another person. She was ordered excluded by an immigration judge on February 12, 1996 and deported that same date. The applicant’s husband is a thirty-nine year-old native and citizen of [REDACTED] and Lawful Permanent Resident. The applicant and her husband currently reside in [REDACTED] with their two children.

Counsel asserts that the applicant’s husband would suffer extreme hardship if he relocated to [REDACTED] with the applicant because he has resided in the United States since 1990 and spent sixteen years obtaining permanent residence through his employment and cannot leave the United States for a substantial period of time without losing this status. *Brief* at 5. Counsel further claims that he would lose the home he worked hard to purchase and would be unable to sell it due to the current real estate market. *Brief* at 5-6. Counsel further claims that the applicant would face hardship in [REDACTED] after residing in the United States for twenty years because unemployment is high there and he has worked in two fields, casting specialty lamps and as an air conditioning technician, for which there is

no market in [REDACTED] *Brief* at 7. In support of these assertions counsel submitted documents indicating that the applicant and her husband had a mortgage balance of [REDACTED] in 2008 and articles indicating that in [REDACTED] where the applicant and her husband reside, home foreclosures were up [REDACTED] in June 2008 from the previous year. The applicant's husband states that he would not be able to find employment in [REDACTED] and further states that people in their neighborhood have lost their home because they were unable to sell them for enough money to pay off their debt and they lost the homes and the money they put into them. *Affidavit of* [REDACTED] dated July 18, 2008. He states that it took him a very long time to obtain his permanent resident status and he does not want to relocate to [REDACTED] and lose this status. *Affidavit of* [REDACTED]

Documentation on the record indicates that the applicant's husband has resided in the United States since 1990, when he was nineteen years old, and has obtained permanent residence through his employment casting iron lamps. He and the applicant owed over [REDACTED] on their home in 2008, and documentation was submitted with the appeal that addressed the foreclosure rate in the county where they live, which is in [REDACTED], one of the states with the highest foreclosure rates in the country. In light of his length of residence in the United States and the current real estate market where they reside in [REDACTED] it appears that the applicant's husband would suffer hardship beyond the common results of removal or inadmissibility if he relocated to [REDACTED] with the applicant, including difficulty readjusting to conditions there and finding employment after twenty years in the United States, potential difficulties selling their home and the possibility of foreclosure and loss of the money they have paid towards the mortgage, and loss of his permanent resident status if he remains outside the United States for too long. These hardships, when considered in the aggregate, would rise to the level of extreme hardship for the applicant's husband if he relocated to [REDACTED]

Counsel asserts that the applicant's husband would suffer hardship beyond the common results of inadmissibility if he remained in the United States without the applicant because at the time the appeal was filed they had been married for fourteen years and would face a permanent separation that is greater than the hardship that would normally result from removal of a spouse or other grounds of inadmissibility. *Brief* at 4-5. The applicant's husband states that the applicant is the biggest blessing in his life and they pursue their dreams together and work together so their children can be raised in the best way possible. *Affidavit of* [REDACTED] The applicant's husband also states that without the applicant's income he would be unable to pay the mortgage and the family's expenses and they would lose their home. He states,

The mortgage on the house takes all of my wages. I rely on [REDACTED] to earn enough at [REDACTED] to pay for all other expenses. . . . We put all of our money into the house, and if we lose it to the bank, we will lose all of our savings. *Affidavit of* [REDACTED]

Documentation submitted with the appeal indicates that the monthly mortgage payment on the home owned by the applicant and her husband is [REDACTED] and they earned a joint income of [REDACTED] in 2007.

The applicant's husband states that he would experience emotional and financial hardship if he is separated from the applicant, including loss of their home and difficulties raising their two children

on his own and working full time. The applicant and her husband have been married for sixteen years and as stated by counsel, she would face a permanent bar to admission that would result in a permanent separation rather than the temporary one that results from other grounds of inadmissibility or removal from the United States. The emotional effects of this permanent separation, when combined with the financial impact of loss of the applicant's income and the potential loss of their home to foreclosure and the difficulties of raising their two children on his own, would amount to extreme hardship for the applicant's husband if he remained in the United States without the applicant. As noted above, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido, supra.* at 1293.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's immigration violations, attempting to enter the United States with a fraudulent document and subsequently entering the country without inspection and periods of unauthorized presence. The favorable factors are the hardship to the applicant's husband and to their children if she is denied admission, her length of residence and property and other ties to the community, her history of employment and filing income tax returns, and her lack of a criminal record or additional immigration violations.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.¹

ORDER: The appeal is sustained.

¹ The AAO notes that though the applicant has been granted a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act, it appears that she remains inadmissible under section 212(a)(9)(A) of the Act based on her 1996 removal and may need to file a Form I-212 Application for Permission to Reapply for Admission.