

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

H5

[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: **SEP 02 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:

[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,

*Tariq Syed*  
for

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 record reflects that the applicant is a native and citizen of Belize who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by falsely claiming United States citizenship. The record indicates that the applicant is married to a United States citizen and the father of two adult daughters. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and daughters.

The Field Office Director found that the applicant had 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 Field Office Director*, dated January 23, 2008.

On appeal, the applicant, through counsel, claims that the applicant's wife will suffer hardship that "stem from two main sources: separation from her life partner and its affect on her and their college student daughter; and worries about [the applicant's] life in Belize given his severe and potentially life-threatening medical conditions." *Counsel's letter, attached to supplemental documents supporting appeal*, dated March 13, 2008.

The record includes, but is not limited to, statements from the applicant and his wife; medical documents for the applicant and his wife; letters of support for the applicant and his wife; wage and tax documents, and household bills; articles on high blood pressure, narcolepsy, sleep apnea, and diabetes; reports and articles on health care and the economy in Belize; and a 2007 country conditions report on Belize. The entire record was reviewed and considered in arriving at a decision on the appeal.

Sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Act provides, in pertinent part, that:

- (i) In general.—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.

- (ii) Falsely claiming citizenship.—

- (I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

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

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

The record reflects that on April 29, 1972, the applicant applied for admission to the United States at the San Ysidro Port of Entry, in California, by claiming to be a United States citizen.

The AAO notes that aliens making false claims to United States citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) afford aliens in the applicant’s position, those making false claims to United States citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [USCIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, [USCIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

*Memorandum by* [REDACTED] *Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3.

As the applicant’s false claim to United States citizenship occurred prior to September 30, 1996, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record indicates that on July 10, 1997, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until January 9, 1998. On March 12, 2007, the applicant filed a Form I-601. On January 23, 2008, the Field Office Director denied the applicant’s Form

I-601, finding the applicant had attempted to enter the United States by falsely claiming United States citizenship and had failed to demonstrate extreme hardship to his qualifying relative.

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 the United States Citizenship and Immigration Service (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 (Board) 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.

In a statement dated March 13, 2008, the applicant’s wife states she “cannot go back to Belize because [they] have nothing there to return to.” She also states “[t]he unemployment rate is very high, and crimes are rising too.” Counsel submitted a country profile on Belize which states “Belize has a problem with violent crime, much of it drug-related, and the trafficking of narcotics to the US.” See *country profile: Belize*, *BBC News*, published February 9, 2008. The record includes a copy of the section on Belize from the Department of State’s Country Reports on Human Rights Practices – 2007. The country reports in the record discuss the high unemployment rate and poor economy in Belize.

The applicant’s wife claims that “[a]t her age it will be especially difficult for [her] to find work” and she “may not be able to do physical work soon due to [her] age.” She also claims that she cannot leave her elderly mother and sister in the United States. The AAO acknowledges that the applicant’s wife has resided in the United States for many years and would experience hardship upon relocation. However, it also notes that she is a native of Belize who spent her childhood years in Belize, and it has not been established that she has no family ties to Belize. In fact, the AAO notes that the record establishes that the applicant’s wife’s three older daughters and grandchild reside in Belize. See *statement from Prudence Evans*, dated March 13, 2008.

The record reflects that the applicant’s spouse had heart surgery on August 14, 2008, she is taking several medications, she had a pacemaker implanted in September 2008 and she has been a patient with

Morningside Primary Care Medical Center since October 23, 2008. *Letter from* [REDACTED] PA-C, dated February 11, 2009.

The applicant's wife claims the applicant "is taking a number of medications...Assuming they are available in Belize, [she] [does] [not] know how he will afford to pay for it." The AAO notes that the record establishes that the applicant is suffering from multiple medical conditions, including hypertension, congestive heart failure, obstructive sleep apnea, and diabetes. *See letter from* [REDACTED] [REDACTED] dated April 8, 2008. [REDACTED] states the applicant's "prognosis is fair however he needs to adhere to his treatment regimen and follow up with his doctors." The AAO acknowledges the additional burdens that the applicant's illness and need for medical treatment would create for the applicant and his wife upon relocation.

The applicant's wife claims that she and the applicant send her older daughters "about \$100 every two months." In an undated letter, the applicant's daughter, who resides in the United States, states the applicant is going to support her when she goes to college. The applicant's wife claims that if the applicant returns to Belize, their daughter "will no longer be able to go to school because we will not be able to afford to help her." The AAO notes that the applicant's daughter is an adult and the record does not establish that she cannot attend college without her parent's financial support. Additionally, the AAO acknowledges that the applicant may suffer some hardship in being separated from her daughter.

The applicant's wife states her mother and sister reside in the United States and they "rely on each other for emotional support." She claims her mother "suffered a stroke" and "is now staying in a residential care facility." She states she visits her mother about twice a week, and her mother "is very emotional and she feels better when [they] visit." The AAO notes that no medical documentation has been submitted establishing that the applicant's mother-in-law suffered from a stroke or is suffering from any medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.*

Considering the applicant's spouse's medical issues, separation from her family in the United States, the lack of employment opportunities in Belize, her concern for the safety of the applicant and the general country conditions, the AAO finds that the applicant's wife would experience extreme hardship were she to reside in Belize.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States without the applicant, counsel claims that she will suffer both emotional and financial hardships if the applicant is removed to Belize. *See counsel's letter*, dated February 27, 2009. The applicant's wife states ever since she "found out that there is a possibility that [the applicant] may be [removed] from the United States, [she] cannot find peace and [does] not sleep well at night." She claims "[i]t will be unbearable for [her] to be separated from [the applicant]." The applicant states his wife "will go insane over worrying about [him]." Additionally, [REDACTED] states "separating [the applicant] from his family will induce several emotional trauma which will be very detrimental to his health." The AAO

acknowledges that the applicant and his wife have been a couple for 20 years and the applicant's wife is concerned about the applicant's health with his multiple medical conditions.

The applicant's wife states on August 14, 2008, she suffered a heart attack. The AAO notes that the record establishes that on August 14, 2008, the applicant's wife had heart surgery, and received a pacemaker in September 2008. *See letter from [REDACTED]*, dated February 11, 2009. Physician Assistant [REDACTED] states the applicant's wife "is currently being cared for by [the applicant]." The applicant's wife states the applicant "was very caring and supportive when [she] was in the hospital." She claims that she relies on the applicant for emotional support. Counsel states the applicant's wife "is still receiving necessary medical treatment, and her current health care provider has advised that she remain in [the applicant's] care." The AAO acknowledges that the applicant's wife may require medical treatment and/or monitoring for her heart condition.

The applicant's wife states "[o]nly by working together [they] are able to pay [their] bills." In a statement dated May 23, 2007, the applicant's wife states her "salary is approximately \$6000.00 per year and [the applicant] makes approximately \$18,000.00 per year." She claims that "[w]ithout [the applicant's] support [her] daughters and [her] would become homeless; [her] salary cannot cover [their] medical expenses." Based on its review of the evidence of record, the AAO finds that when the hardship factors in the record are considered in the aggregate, the applicant has established that his wife would experience extreme hardship if his waiver request were to be denied and she remained 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 entry into the United States by misrepresentation, and periods of unlawful presence and unauthorized employment. The favorable and mitigating factors are the applicant's United States citizen wife and children, and the extreme hardship to his wife if he were refused admission.

The AAO finds that, although the immigration violations committed by the applicant were 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. Accordingly, the appeal will be sustained.

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.