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



U.S. Citizenship  
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BRISTOL, PA 19056

FILE: [REDACTED] Office: PHILADELPHIA Date: SEP 03 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.

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,

*Argum Sikka*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director (“district director”), Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Turkey 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 procuring admission into the United States by willful misrepresentation. 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 U.S. citizen husband and child.

The district director concluded that the applicant 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 Acting District Director*, dated November 14, 2007.

On appeal, counsel for the applicant contends that the applicant’s husband will suffer extreme hardship if the applicant is compelled to depart the United States, and that the district director failed to adequately consider all elements of hardship in light of decisions of the Board of Immigration Appeals (BIA) and the Supreme Court. *Statement from Counsel on Form I-290B*, dated December 12, 2007.

The record contains a brief from counsel; reports on conditions in Turkey; a statement from the applicant’s husband; documentation regarding the applicant’s prior status as an orphan in Turkey; an article on young women in Turkish orphanages; copies of tax records for the applicant’s husband; a copy of a marriage record for the applicant; copies of the applicant’s birth record and passport; a copy of the applicant’s daughter’s birth certificate, and; a copy of the applicant’s husband’s U.S. passport. The entire record was reviewed and considered in rendering this decision.

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

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 entered the United States using a passport that belonged to another individual. Thus, she procured entry by misrepresentation, and she was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal.

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 her daughter 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 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 the present matter, the applicant’s husband stated that he met and married the applicant in 1997, and he described their relationship together. *Statement from the Applicant’s Husband*, dated October 24, 2007. He explained that the applicant’s mother left her and her father when she was young, and that her father died when she was four years old, leaving her an orphan. *Id.* at 1. He noted that the applicant held a job as an office helper with a government-controlled company in Turkey. *Id.* He indicated that he won the diversity visa lottery in 1998, and that immigrating to the United States was a great opportunity because his job opportunities and prospects in Turkey were poor. *Id.* He stated that he came to the United States with the understanding that the applicant could obtain lawful permanent residence based on his status, yet they did not meet an application deadline. *Id.* He explained that the applicant resided with his parents, yet his parents insisted he take the applicant with him to the United States because she was his responsibility. *Id.*

The applicant’s husband provided that he visited Turkey, and that on two of his trips he took the applicant to the U.S. Embassy to seek a visa, but she was denied. *Id.* He indicated that his father was angry and paid someone to help the applicant come to the United States with a purchased passport. *Id.* at 2.

The applicant’s husband expressed that he and his 17-month-old daughter will suffer hardship if the applicant is compelled to return to Turkey. *Id.* He stated that the prospect of his daughter growing up without one of her parents is difficult. *Id.* He explained that his father left Turkey to work in Germany before he was born, and that he does not wish for his daughter to experience the same tragedy. *Id.*

The applicant’s husband asserted that he cannot return to Turkey, as job opportunities are limited for individuals with his level of education and background. *Id.* He stated that he would be unable to

support his family there and their choices would be severely limited. *Id.* He indicated that the applicant would be unable to support herself in Turkey, and she would have no family network to support her in caring for their daughter. *Id.* He stated that he would be compelled to support two households should he remain in the United States, which would create significant economic hardship. *Id.*

The applicant's husband expressed that he and his family would be emotionally devastated if the applicant returns to Turkey. *Id.*

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, dated January 9, 2008. Counsel asserts that the district director failed to adequately consider the asserted elements of hardship to the applicant's husband, and that the district director based the denial solely on financial considerations. *Id.* at 1-2.

Counsel states that the applicant's husband has family ties to the United States, as the applicant and their daughter reside here. *Id.* at 2-3. Counsel provides that the applicant's father-in-law resides in Turkey, but that his relationship with the applicant's husband is strained due to his treatment of the applicant in Turkey. *Id.* at 3.

Counsel contends that conditions are poor in Turkey, including serious problems faced by women. *Id.* at 3-6. Counsel states that the applicant's husband will suffer hardship should the applicant and their daughter face a culture of violence and prejudice against women. *Id.* at 6. Counsel asserts that professional, educational, and emotional opportunities for development and growth will be severely limited for the applicant and her daughter in Turkey. *Id.*

Counsel adds that the applicant's daughter's access to health care in Turkey would be limited, which would further impact the applicant's husband. *Id.* at 7.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The applicant has not shown that her husband will suffer extreme hardship should he return to Turkey to maintain family unity.

The applicant's husband indicated that he will endure financial difficulty should he reside in Turkey. Counsel asserts that the district director mischaracterized the holding of the Supreme Court in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), where it was found that two children would not experience extreme hardship in Korea because their parents had significant financial resources, education, and an ability to find employment in Korea. *Id.* at 6. In contrast, counsel explains that the applicant's husband is a high school graduate. *Id.* Counsel indicates that the applicant's husband has worked as a painter, a bus boy, and a driver, and that none of these jobs are easy to find in Turkey. *Id.* Counsel states that the applicant's husband would be unable to earn income in Turkey that is comparable to his earnings in the United States. *Id.*

The AAO acknowledges that the applicant's husband works as a painter in the United States and that he wishes to continue his trade. However, the record lacks adequate reports or information about the economy or job market in Turkey such that the AAO can conclude that the applicant's husband

would be unable to secure employment there, or that his educational level would hinder him from meeting his and his family's economic needs. The applicant has not presented any information regarding her husband's possible income level or their likely expenses in Turkey. The applicant's husband noted that the applicant worked in Turkey prior to coming to the United States, and she has not asserted that she would be unable to again find employment there. The applicant's husband's father resides in Turkey, and the applicant has not described his circumstances as an example of those her husband may face. While the applicant's husband indicated that he visits Turkey, he has not provided information regarding his experiences there to reflect what conditions he would encounter should he reside there again. Accordingly, the applicant has not shown by a preponderance of the evidence that her husband will face extreme economic conditions should he return to Turkey.

The applicant's husband will face emotional consequences should he return to Turkey. He has resided in the United States for a lengthy duration and he indicated that immigrating represented an opportunity to improve his life. It is evident that now returning to Turkey would involve psychological difficulty. Yet, this circumstance represents a common challenge faced by individuals who relocate abroad due to the inadmissibility of a spouse. The applicant's father-in-law resides in Turkey, and the applicant's husband noted that he visits there. Counsel states that the applicant's husband has a strained relationship with his father, yet the applicant has not asserted or shown that her husband lacks other relatives or friends in Turkey. The record suggests that her husband continues to have significant ties to the country and support there. As the applicant's husband is a native of Turkey, he would not face the challenges of adapting to an unfamiliar language or culture should he reside there.

It is evident that hardship to the applicant and the applicant's daughter will impact the applicant's husband. The AAO has carefully examined the report on conditions in Turkey, particularly with respect to risks and prejudices faced by women there. It is noted that domestic abuse and honor killings were a serious concern, yet the applicant has not asserted or shown that she would be subjected to such harms, or that her husband's family would target her for abuse. The AAO gives due consideration to the emotional hardship the applicant's husband would face due to the applicant and their daughter residing in a culture where women face general discrimination and social impediments to advancement in the workplace. However, the applicant has not shown that she or her daughter would be at immediate risk of harm or that she would be unable to engage in employment due to her gender.

Counsel indicates that the applicant's daughter's access to health care in Turkey would be limited. Yet, the applicant has not asserted or shown that her daughter has conditions that cannot be treated in Turkey, or that she would lack access to any needed health care.

The record supports that the applicant spent her childhood as an orphan without the presence of immediate family members, and it is evident that her emotional experience will impact her husband. However, should the applicant's husband reside with her and their daughter in Turkey, she will not be faced with now living separately from her immediate family.

All elements of hardship to the applicant's husband, should he reside in Turkey, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her husband will experience extreme hardship should he join her in Turkey to maintain family unity.

The applicant has shown that her husband will endure extreme hardship should she return to Turkey and he remain in the United States. The applicant presents documentation to show that she became an orphan at age three, and that she grew up in state-run care. She further submits reports that describe the challenges faced by orphaned females who spent their childhood in state institutions, as well as general prejudice and harms directed at women. The record shows that the applicant would face significant difficulty residing in Turkey without her husband, whether or not her daughter resided with her. The applicant's husband explained that the applicant resided with his parents, but that she was no longer welcomed or supported because she was his "responsibility." Thus, without his presence in Turkey, his statements reflect that the applicant would be without family support there. The applicant's history as a female orphan presents unusual difficulty not commonly experienced when individuals relocate abroad due to inadmissibility, and it is evident that her hardship would greatly contribute to her husband's emotional difficulty.

The AAO acknowledges that the applicant's husband would have significant psychological difficulty regarding his young daughter's experience in Turkey should she reside there with only the applicant.

While family separation is a common consequence when individuals relocate due to inadmissibility, all elements of hardship to the applicant's husband must be considered in aggregate. It is evident that the applicant's husband will endure significant emotional hardship should he reside apart from his wife or daughter.

As noted above, the applicant has not presented sufficient explanation or documentation to show that she would be unable to work in Turkey or that she would be unable to meet her needs there. Yet, maintaining two households often requires greater economic resources than unifying a family, and the AAO acknowledges that family separation will have some economic impact on the applicant's husband.

All stated elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. Based on the foregoing, the record shows that he will endure extreme hardship should the applicant depart and he remain. As discussed above, this finding is largely based on his sharing in the applicant's unusual difficulty in Turkey that distinguishes his challenges from those commonly faced.

However, as the applicant has not shown that her husband will suffer extreme hardship should he relocate to Turkey, she has not established that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver 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 regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.