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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
and Immigration
Services

H5

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI

Date:

SEP 07 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,

Perry Rhew
for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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 seeking to procure admission and other benefits provided under the Act 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 September 16, 2002.

On appeal, counsel for the applicant contends that the district director applied an overly stringent interpretation of the requirements for a waiver under section 212(i) of the Act. *Brief from Counsel*, dated November 15, 2002. Counsel asserts that the applicant’s husband and son will suffer extreme hardship if the present waiver application is denied. *Id.* at 2.

The record contains a brief from counsel; documentation relating to the applicant’s son’s educational activities; statements from the applicant and her husband; a psychological evaluation for the applicant’s husband; documentation regarding the applicant’s and her husband’s employment, tax filings, income, and business activities; a copy of the applicant’s marriage certificate; a copy of the applicant’s husband’s naturalization certificate, and; a copy of the applicant’s son’s lawful permanent resident card. 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 misrepresented her marriage date to a consular officer to conceal that she did not have a valid marriage in order to obtain an immigrant visa. Specifically, the record shows that the applicant completed steps to marry her husband in January 1988 at a time when her husband was legally married to another individual, Ms. Nancy Alvarez.¹ Her husband divorced Ms. Alvarez on October 10, 1990. The applicant obtained a fraudulent marriage certificate

¹ The applicant testified that her husband paid \$5,000 to Ms. Nancy Alvarez, a U.S. citizen, as compensation to marry him for the sole purpose of obtaining immigration benefits in the United States. *Record of Sworn Statement*, dated April 21, 1996. While the record does not clearly show the basis of the applicant’s husband’s subsequent lawful permanent residence, if he obtained lawful permanent residence through marriage fraud he was not eligible for such status, and he was likewise not eligible for naturalization based on such fraudulently obtained lawful permanent residence.

that indicated that she and her husband were married on March 15, 1993 in order to conceal that they attempted to marry at a time when her husband was already married. The applicant traveled to the United States using her immigrant visa where her misrepresentation was discovered.

The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States and other benefits provided under the Act by willful misrepresentation. The applicant does not contest her inadmissibility on appeal. Accordingly, she requires a waiver of her inadmissibility under section 212(i) of the 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 her child 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-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 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.

On appeal, counsel contends that the district director applied an overly stringent interpretation of the requirements for a waiver under section 212(i) of the Act. *Brief from Counsel* at 1. Counsel asserts that the applicant’s husband and son will suffer extreme hardship if the present waiver application is denied. *Id.* at 2. Counsel states that the district director ignored decisions of the Supreme Court that address fundamental rights regarding keeping families intact. *Id.* at 3.

The applicant provides a psychological evaluation of her husband conducted by [REDACTED] [REDACTED] indicated that he based his report on a single interview with the applicant’s

husband, and that psychological testing would be needed to complement the evaluation. *Psychological Evaluation*, dated October 14, 2002. [REDACTED] stated that the applicant's husband occasionally travels to Peru to visit his mother and relatives. *Id.* at 2. [REDACTED] indicated that the applicant's husband reported feeling anxious, depressed, and stressed by work difficulties. *Id.* He provided that the applicant's husband stated that he could not return to Peru and "start a living there" at his age. *Id.* [REDACTED] indicated that the applicant's husband asserted that the applicant was responsible for 90 percent of the care of their son, and that he would have no one in the United States to help him should the applicant depart. *Id.* [REDACTED] stated that the applicant's husband had concern for his and his son's emotional well-being should they be separated from the applicant. *Id.*

The applicant stated that her husband and son will experience hardship should the present waiver application be denied. *Statement from the Applicant*, dated June 23, 1998. She explained that she does not work, and that she cares for her son and home. *Id.* at 1. She indicated that she relies on her husband for support. *Id.* She added that her family will endure emotional and economic hardship if her husband relocates to Peru with her. *Id.* She indicated that her husband cannot abandon his construction company, and that his employees depend on him. *Id.* She stated that she only found work on the weekends when she resided in Peru and that the transportation system is poor. *Id.*

The applicant's husband indicated that he resides with the applicant and their son who was born on March 10, 1991. *Statement from the Applicant's Husband*, dated June 23, 1998. He stated that he and their son will suffer severe hardship should the applicant be compelled to depart the United States. *Id.* at 1. He provided that their son would grow up without a mother, and that it would be difficult for their son to join the applicant in Peru due to the applicant's inability to financially support him. *Id.* He expressed that he does not wish to be separated from the applicant, but that he cannot relocate to Peru due to his construction company in the United States. *Id.*

The applicant's husband further stated that the applicant relies totally on him for financial and emotional support. *Supplemental Statement from the Applicant's Husband*, dated May 22, 2000. He added that the applicant performs all of their household chores, including cleaning, cooking, laundry, and providing transportation for their son. *Id.* at 1. He explained that he departs for work at 5:00am six days per week and that he does not return home until 6:00pm, thus he would not be able to operate his business and care for his son without the applicant's assistance. *Id.*

Upon review, the applicant has not shown that her husband will endure extreme hardship should the present waiver application be denied. The applicant has not established that her husband will suffer extreme hardship should she depart the United States and he remain. The applicant's husband indicated that he will endure difficulty caring for his son while operating his business should the applicant return to Peru. The applicant has not provided complete financial information regarding her husband's business. The record reflects that he employs other individuals, and the applicant has not sufficiently described her husband's business such that the AAO can determine whether he may utilize other employees to assist him such that he can commit more time to parenting his son and meeting the needs of his household.

It is noted that the applicant's son was born on March 10, 1991, thus he is presently age 19. The AAO acknowledges that the applicant filed the present appeal at a time when her son was

significantly younger. Yet, even considering the applicant's son's age at the time of filing the appeal, the applicant did not show that her son has unusual needs, or that her husband would be unable to provide sufficient guidance and care for their son while managing his business and household. As the applicant's son is now age 19, the record does not support that he requires supervision from her husband that places demands on her husband's time.

The record shows that the applicant has been supported by her husband financially, and she has not asserted or established that her husband would endure economic difficulty should she reside outside the United States.

The applicant's husband expressed that he will endure emotional difficulty should he be separated from the applicant. The AAO has carefully examined the statements from the applicant and her husband, as well as the report from [REDACTED] in order to assess the level of emotional hardship her husband will face should she depart the United States. However, the single report is of limited use, as it was conducted for the purpose of this proceeding, and does not represent treatment for a mental health disorder. The applicant has provided no evidence that her husband received or required follow-up evaluation from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's husband, it does not show that, should the applicant depart the United States, her husband will suffer emotional consequences beyond those ordinarily experienced by the family members of those who depart due to inadmissibility.

The record contains references to hardships that will be experienced by the applicant's son, and her husband expressed that he will endure emotional hardship should their son lose the applicant's daily presence. The AAO has considered the impact family separation will have on the applicant's son. It is evident that the separation of parents and children often results in significant emotional difficulty. Yet, the applicant has not established that her son would experience challenges beyond those commonly expected, or that his difficulty would raise the applicant's husband's hardship to an extreme level.

All 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 applicant has not shown that her husband will suffer extreme hardship should he reside in the United States and she depart.

The applicant has not shown that her husband will endure extreme hardship should he join her in Peru. As discussed above, the record lacks sufficient evidence in order for the AAO to assess the status or resources of the applicant's husband's company. Thus, the applicant has not shown that her husband would be unable to continue to operate his business through the use of employees should he reside outside the United States. [REDACTED] noted that the applicant's husband visits his mother and relatives in Peru, which suggests that he continues to have connections in the country. The applicant has not shown that her husband would lack the ability to arrange employment or business opportunities in Peru should he reside there to maintain family unity. Nor has the applicant shown that she would be unable to engage in employment in Peru to help meet their family's needs. Thus, the applicant has not established that her husband would face financial difficulty should he reside in Peru.

The applicant has not provided explanation or evidence to show that her son would endure significant hardship should he return to Peru. Nor has she established that, as a 19-year-old, her son would be compelled to return to Peru should he choose to remain in the United States. Thus, the applicant has not shown that, should her husband return to Peru, their son would endure challenges that would elevate her husband's hardship to an extreme level.

The applicant's husband has resided in the United States for a lengthy period, and he has a business and community in the country. However, he is a native of Peru and he returns there to visit his mother and family members. In his statement of May 22, 2000, he commented that he reads and understands some English, but that his statement was translated into Spanish. *Supplemental Statement from the Applicant's Husband* at 1. Thus, it is evident that the applicant's husband would not endure the challenges of adapting to an unfamiliar language or culture should he return to Peru.

The AAO has considered all stated elements of hardship to the applicant's husband, should he reside in Peru, in aggregate. Based on the foregoing, the applicant has not shown that her husband will suffer extreme hardship should he reside in Peru to maintain family unity. Accordingly, the applicant has not established that denial of the present waiver application "will result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act.

Counsel contends that the district director applied an overly stringent interpretation of the requirements for a waiver under section 212(i) of the Act. However, the AAO agrees with the district director that the applicant has not shown that her husband will suffer extreme hardship. Further, the AAO has reviewed the present appeal on a de novo basis, irrespective of the district director's analysis or application of law. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis). Thus, the applicant has not been prejudiced by an erroneous application of law.

Counsel states that the district director ignored decisions of the Supreme Court that address fundamental rights regarding keeping families intact. Yet, counsel has not cited any decisions of the Supreme Court or shown that the district director's decision was contrary to any precedent administrative or court decisions.

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) 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.