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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: LOS ANGELES, CA Date: **SEP 07 2010**

IN RE: Applicant: M [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Perry Rhew
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter 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 Mexico 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 entering the United States by presenting a valid I-551, Alien Resident Card, that was not his own. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated December 15, 2007.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on March 31, 2000; copies of the couple's three U.S. citizen children's birth certificates; two statements and a declaration from [REDACTED] two letters from a psychologist; a copy of [REDACTED] prescription medication; Social Security statements for the applicant and his wife; tax and other financial documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in January 1993 by presenting a fraudulent I-551, Alien Resident Card. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 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 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 this case, the applicant’s wife, [REDACTED] states that she came to the United States from Mexico in 1984 when she was twelve years old. She states that her entire immediate family lives in the United States and that they are all naturalized U.S. citizens. [REDACTED] contends that she has a daughter from a previous relationship whom she raised as a single mother until she met the applicant. She states her husband is a father to her daughter and that the couple has two U.S. citizen children together. According to [REDACTED] before she met the applicant, she was suffering from depression, low self esteem, and loneliness due to being abandoned by the father of her oldest daughter. She states that the applicant has provided her with emotional support, love, and patience, allowing her to emerge from her depression. [REDACTED] states she has been seeing a psychologist and is taking a prescription medication for her depression and anxiety. In addition, [REDACTED] states that she earns about \$26,000 and her husband earns about \$40,000. She contends she would be near poverty level on her income alone. Furthermore, [REDACTED] contends she cannot move back to Mexico to be with her husband because her entire life is in the United States and the prospect of relocating her family to Mexico is unthinkable. She further contends she would be unable to find work there and her children would be unable to obtain the medical treatment they need. *Statements of* [REDACTED] dated October 9, 2007, and June 14, 2005; *Declaration of* [REDACTED] dated February 7, 2002.

The record also contains two letters from [REDACTED] psychologist. The psychologist states that [REDACTED] first visit was in July 2007 and that she is under his care for Major Depressive Disorder and Anxiety Disorder. According to the psychologist, [REDACTED] was prescribed an antidepressant medication from her primary care physician, who referred her to the psychologist when her condition did not improve. The psychologist states that [REDACTED] is participating in cognitive-behavioral psychotherapy on a regular basis and that a psychological evaluation (Millon Clinical Multiaxial Inventory-III) confirms the diagnosis of Major Depression and Anxiety. The psychologist also states that [REDACTED] reports a previous episode of Major Depression in 1996, which purportedly lasted over a year, for which she did not receive professional treatment. The psychologist contends that [REDACTED] "mental illness can not be construed to be a 'common result' of deportation" because her depression is exacerbated, but not caused, by her husband's deportation, an "additional stressor" that worsens her pre-existing mental condition. The psychologist further contends that "the loss of her spouse would likely render her unable to adequately care for her children due to disabling depression." Letters from [REDACTED] dated February 5, 2008, and August 27, 2007. The record contains a copy of [REDACTED] prescription medication for depression and anxiety.

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will suffer extreme hardship if his waiver application is denied.

The record shows that [REDACTED] has a history of depression and anxiety and that she is undergoing cognitive-behavioral psychotherapy on a regular basis with a clinical psychologist. Letter from [REDACTED] dated February 5, 2008. According to [REDACTED], she had a previous episode of major depression in 1996 after she discovered that the father of her oldest daughter was having an affair with another woman, which lasted for over a year as she was raising her daughter as a single parent. *Id.*; Statements of [REDACTED] dated October 9, 2007, and June 14, 2005. In addition, according to the most recent tax documents in the record, [REDACTED] earned \$27,356 in 2006. 2006 Wage and Tax Statement (Form W-2). If [REDACTED] were to remain in the United States without the applicant, she would be solely responsible for financially supporting her three minor children. The 2006 Poverty Guidelines requirement for a family unit of four is \$20,000, and 125% of that figure, which is a sponsor requirement as stated in the affidavit of support, is \$25,000. Given that [REDACTED] just barely surpasses the poverty threshold, the AAO finds that without her husband's financial assistance, [REDACTED] would suffer extreme financial hardship. Considering her mental health problems and the financial hardship she would suffer as a single parent with three minor children cumulatively, the AAO finds that Ms. Garcia would suffer extreme hardship if she remained in the United States without her husband.

Furthermore, it would also constitute extreme hardship for [REDACTED] to move back to Mexico to be with her husband. The record shows that [REDACTED] has seen the same psychologist since July 2007 and she would need to discontinue her ongoing psychotherapy if she relocated to Mexico. Letter from [REDACTED] dated February 5, 2008. In addition, [REDACTED] would need to move her three U.S. citizen children, who are currently seven, nine, and sixteen years old, to Mexico after having only lived in the United States their entire lives. Furthermore, [REDACTED] would be leaving her entire immediate family, including both of her parents and her siblings, all of whom are U.S.

citizens. Under these circumstances, and considering all of these factors cumulatively, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with inadmissibility. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's significant family ties in the United States including his U.S. citizen wife and three U.S. citizen children; the extreme hardship to the applicant's wife if he were refused admission; and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violation is 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.

ORDER: The appeal is sustained.