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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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Services

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SEP 30 2010

FILE: [Redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:

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:

SELF-REPRESENTED

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 Sella*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**ACTION COMPLETED  
APPROVED FOR FILING**  
Initials: JT Date: 6/22/11  
FCO/Unit COV

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 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 reside in the United States with his lawful permanent resident wife.

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 District Director*, dated December 4, 2007.

On appeal, the applicant asserts that his wife will suffer extreme hardship should he be prohibited from residing in the United States.<sup>1</sup> *Brief in Support of Appeal*, dated January 23, 2008.

The record contains a brief in support of the appeal; a statement from the applicant's wife; medical and prescription documentation for the applicant's wife, and; a copy of the applicant's wife's immigrant visa. The applicant further provided a document in a foreign language. Because the applicant failed to submit a translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, 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 on or about April 13, 1999 the applicant attempted to enter the United States at the Eagle Pass, Texas point of entry. He made false statements to immigration inspectors regarding his daughter, and they determined that he was inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by willful misrepresentation.

The applicant indicates that the district director did not indicate what statements he made that serve as the basis for his inadmissibility, and did not show that they constitute fraud or misrepresentation.

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<sup>1</sup> It is noted that an attorney issued the brief submitted on appeal and indicated that he represents the applicant. However, the applicant has not provided a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, to support that the attorney is an authorized representative. The AAO treats the brief and statements from the attorney as representations made by the applicant, and all submitted correspondence from the attorney has been considered on appeal.

However, it is evident that the applicant's misrepresentations regarding his daughter were determined by a U.S. immigration inspector to be material to his eligibility to enter the United States, as he was refused admission and his visa was cancelled. 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. The applicant has not presented any evidence or explanation regarding his attempted entry or the cancellation of his visa. Thus, the applicant has not presented facts that establish that he was erroneously deemed inadmissible under section 212(i)(1) 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 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.

On appeal, the applicant asserts that his wife will suffer extreme hardship should he be prohibited from residing in the United States. *Brief in Support of Appeal* at 2. The applicant provides that he has been married to his wife for over 25 years, and that she is a lawful permanent resident of the United States. *Id.* The applicant indicates that his wife is physically disabled and she requires his help. *Id.* He provides that his wife suffers from various ailments and she requires daily treatment and supervision. *Id.* She suffers from complications from meningitis including paralysis on the right side of her body, and she has diabetes mellitus type II. *Id.* The applicant further provides that his wife has osteoarthritis on her spinal column dorsolumbar area and arterial hypertension. *Id.* He explains that he would be the person to take his wife to the doctor, help her obtain medication, and help her with household chores. *Id.* The applicant indicates that he provides financial support for his wife. *Id.*

The applicant provides that his wife's difficulties are much more than family separation or financial challenges. *Id.* at 3. He represents that, without his assistance, his wife will be unable to go to her medical appointments or take her medication, and that she requires his care and financial support to survive. *Id.*

The applicant's wife states that she requires the applicant, as she is disabled and depends on him to take her to the doctor, to pick up her medicine, and for innumerable other personal needs. *Statement from the Applicant's Wife*, dated January 18, 2008.

The applicant submits numerous documents regarding his wife's health that show that she is disabled with serious health problems. Professor [REDACTED] of the Family, reports that the applicant's wife "suffers from a total disability which is irreversible caused by the severe effects of meningitis." *Letter from [REDACTED]* dated January 7, 2008. [REDACTED] states that the applicant's wife "is catalogued as a disabled person," and that she suffers from the after-effects of meningitis, right paralysis, paralysis of half of the right side of the body, diabetes mellitus type II, osteoarthritis of the spinal column dorsal lumbar, and arterial hypertension. *Letter from [REDACTED]* dated December 14, 2007. [REDACTED] indicates that he finds the applicant's wife "clinically incapacitated totally and irreversible." *Letter from [REDACTED]* dated December 17, 2007. The applicant provides documentation regarding numerous medications that his wife was prescribed in Mexico for her conditions.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from residing in the United States. The applicant has not shown that his wife will endure extreme hardship should she reside in Mexico with him to maintain family unity. The AAO has carefully examined the medical documentation for the applicant's wife. It is evident that she has debilitating health conditions and that she requires substantial assistance and medical care. The record supports that she faces significant and unavoidable hardship due to her physical health, whether or not the present waiver application is denied.

The AAO observes that all of the medical documentation the applicant provided for his wife was generated by medical professionals who examined and treated her in Mexico in 2007 and 2008. Thus, the record suggests that the applicant's wife is receiving medical services in Mexico. The applicant has not provided any evidence to show that his wife has received medical treatment in the United States, or that residing in Mexico would separate her from the physicians who currently monitor her conditions. The applicant has not asserted that his wife will lack access to continued medical care should she remain in Mexico.

The applicant's wife expresses that she relies on the applicant to take her to medical appointments, obtain her medication, and perform common tasks. The record clearly shows that the applicant's wife requires such assistance. As the applicant's wife has received treatment and prescription medication in Mexico, the documentation submitted by the applicant supports that she may receive his assistance should she reside with him there.

The applicant's wife reported that she relies on the applicant for financial support. Given the applicant's wife's physical impairment, it is evident that she would face great challenges engaging in employment. However, as discussed above, the applicant's wife has received medical care in Mexico, and the applicant has not asserted or shown that he or his wife would lack adequate resources there to continue his wife's medical treatment or to meet their needs.

The applicant has not asserted or shown that his wife would endure less hardship in the United States than she would experience in Mexico. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's wife may face. As noted above, in proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the applicant bears the burden of proving eligibility. *See* Section 291 of the Act, 8 U.S.C. § 1361.

All stated elements of hardship to the applicant's wife, should she reside with the applicant in Mexico, have been considered in aggregate. The AAO has paid particular attention to the applicant's wife's physical condition and medical needs, and interpreted all evidence in a light most favorable to the applicant. However, based on the foregoing, the applicant has not provided sufficient documentation or explanation to show by a preponderance of the evidence that his wife will experience extreme hardship should she reside in Mexico.

The record establishes that the applicant's wife will endure extreme hardship should she reside in the United States without the applicant. The severity of the applicant's wife's physical condition and need for assistance constitute unusual circumstances not commonly faced by individuals who reside apart from a spouse due to inadmissibility. However, as noted above, an applicant must show that his qualifying relative will suffer extreme hardship whether she resides in the United States or abroad. As the applicant has not shown that his wife will endure extreme hardship should she reside in Mexico, he has not established that denial of the present waiver application "would result in extreme hardship," 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 he merits a waiver as a matter of discretion.

In the present matter, the applicant has not met his burden to prove that he is eligible for a waiver under section 212(i) of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.