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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: [redacted] Office: NEWARK, NJ Date: APR 0 4 2011

IN RE: [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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Poland 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 having misrepresented a material fact on a Form I-485 application for adjustment of status. He is the spouse of a U.S. citizen, the son of a lawful permanent resident and has two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 15, 2008.

On appeal, counsel for the applicant asserts the Field Office Director erred in finding that a qualifying relative would not experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received October 17, 2008.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that the applicant misrepresented a material fact on a Form I-485 filed on October 2, 1997, by indicating he was single when, in fact, he had been married since June 5, 1995. The applicant was able to adjust his status on August 13, 1998, as the unmarried son of a United States resident alien. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact.

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 spouse and mother are qualifying relatives 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) ([redacted] 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.

The AAO will first examine hardship upon relocation. On appeal counsel asserts that the applicant's qualifying relatives would experience extreme hardship if they had to relocate to Poland with the applicant. *Brief in support of appeal*, received November 25, 2008. Counsel explains that the applicant's mother is advanced in age, has several serious medical conditions and that all of her immediate family, including children and grandchildren, reside in the United States. Counsel also asserts that the applicant's spouse's immediate family resides in the United States and that she has no family in Poland.

The record contains a statement from listing the medical conditions of the applicant's mother as coronary artery disease, hypercholesterolemia and hypertension. *Statement of* dated November 2, 2007. Statements from family members corroborate that the applicant's mother suffers heart problems and has to attend her doctor regularly. The medical conditions of the applicant's mother and the relationships she has with her doctors and health care providers represent a critical community tie.

The record also contains statements from numerous family members discussing their residence in the United States and the community and family ties that would be severed if the applicant's mother and spouse had to relocate to Poland.

The AAO also notes that the applicant has two school-aged children. While children are not qualifying relatives in these proceedings, impacts on them may be indirectly related due to their impact on a qualifying relative, in this case the applicant's spouse and mother. The record indicates that these children were born and raised in the United States and it is reasonable to recognize that relocating them to Poland at this age would result in a measurable hardship factor for the applicant's spouse.

When these factors are considered in the aggregate they establish that the applicant's mother would experience extreme hardship if she were to relocate to Poland with the applicant, however, there is insufficient evidence to establish that the hardship factors impacting the applicant's spouse would be uncommon or rise to the level of extreme hardship.

With regard to hardship upon separation, if the applicant's spouse and mother were to remain in the United States, counsel asserts that they would experience physical, emotional and financial hardship if the applicant were removed. Counsel asserts that the applicant's mother, who is advanced in age and has several medical conditions, is physically and financially dependent on the applicant. Counsel also asserts that the applicant's mother would experience emotional hardship if the applicant and his family had to return to Poland and that both she and the applicant's spouse depend on the applicant's employment for income and health benefits. Counsel explains that the applicant is the sole income earner for their family and that if the applicant were removed his spouse would have to seek employment, resulting in extreme hardship to their children.

The applicant's spouse has submitted a statement asserting that she and both of her children are financially dependent on the applicant's income and employment benefits. *Statement of the applicant's spouse*, dated October 22, 2007. The applicant's mother has submitted a statement asserting she is greatly stressed about the fact that she may be permanently separated from the applicant and his family if he is removed because her health condition would preclude her from travelling to visit them. *Statement of the applicant's mother*, Novemer 7, 2007.

Several family members have submitted statements attesting to the financial and emotional hardships that would impact their family if the applicant were removed.

The record contains a statement from the applicant's mother's attending doctor indicating that she suffers from coronary artery disease, hypercholesterolemia and hypertension. The applicant's mother states that the emotional stress of the applicant's removal would aggravate her medical conditions and have a physical impact on her. Statements from the applicant's mother and other family members also attest to the role the applicant plays in supporting his mother.

The record also contains tax returns which indicate that the applicant owns and operates a trucking business, and that he earned $121,000 in 2004. However, there is no documentation in the record which clearly establishes that the applicant's mother depends on health insurance provided by the applicant's employment. The record indicates that the applicant's spouse is unemployed and contains a copy of the deed for the residential property on which the family resides, but the AAO

notes that the applicant's mother resides with his sister. The degree of financial impact on the applicant's mother is not established by the record.

The financial impact on the applicant's spouse is also not established by the record. There is nothing which indicates that the applicant's spouse would be incapable of employment or that the applicant would be unable to support his spouse financially from abroad. Having to seek employment to provide for one's family's financial needs is not considered an uncommon hardship factor. The AAO also observes that counsel has not submitted that child care expenses, in the event the applicant's spouse had to seek employment, would be an uncommon challenge, or that the applicant's spouse's immediate family would not be able to mitigate the impacts of the applicant's departure by providing financial or childcare support.

Even when the hardship factors impacting the applicant's spouse are examined in the aggregate they are insufficient to establish that she would experience challenges rising above the common hardships associated with separation due to an inadmissible family member.

While the record indicates that the applicant's mother would experience some emotional and physical impact, there is insufficient evidence to establish that these impacts rise above the common impacts experienced by the relatives of inadmissible aliens who remain in the United States. There is also insufficient evidence to establish that the applicant's spouse would experience extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.