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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office:

Date: **APR 05 2011**

IN RE:

Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, [REDACTED]. 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 [REDACTED] who was found to be inadmissible to the United States pursuant to 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. 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 child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated October 27, 2008.

On appeal, counsel contends the applicant established the requisite hardship. Counsel states that the applicant's wife, [REDACTED] recently suffered a stroke while she was six months pregnant and continues to have no use of her left arm as well as balance, gait, and memory problems. Counsel includes additional documentation, including letters from [REDACTED] physicians and physical therapist.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on December 1, 2005; a copy of the couple's U.S. citizen child's birth certificate; a letter from [REDACTED] letters from [REDACTED] physicians and physical therapist; copies of [REDACTED] medical records; a letter from [REDACTED] parents; a psychological evaluation; copies of tax and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for [REDACTED] letters from [REDACTED] employer; copies of photographs of the applicant and his wife; and 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 pertinent part:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant does not contest, that on June 1, 2002, the applicant attempted to enter the United States using a fraudulent [REDACTED] passport. The applicant was detained and subsequently paroled into the United States on June 11, 2002. Therefore, 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.

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 child 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-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 [redacted] 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 suffers from bipolar disorder, depression, and attention deficit disorder. She states she had been going to therapy every week, but stopped going to therapy once she started dating the applicant because she “felt good for once.” According to [redacted], she found out she was pregnant in October of 2006, but had a miscarriage, a very upsetting event for both her and her husband. She contends that if her husband returns to [redacted] she would not know what to do and “would have so many mental breakdowns.” In addition, she states that she earns \$24,000 per year and would be unable to pay for all of her expenses without her husband’s financial assistance. *Letter from* [redacted] dated August 7, 2008.

A letter from [REDACTED] physician states that she has been on medications for bipolar disorder since June 2004. *Letter from [REDACTED], dated November 22, 2008.*

A psychological evaluation of [REDACTED] states that she suffers from bipolar illness and attention deficit/hyperactivity disorder. [REDACTED] reported being diagnosed with bipolar illness during adolescence and was treated in psychotherapy on a weekly basis from the age of fifteen until seventeen. She also was treated by a psychiatrist from 2003 – 2004 and was prescribed numerous medications. The psychologist describes [REDACTED] as “psychologically fragile” and contends that if her husband returned to [REDACTED], her symptoms would exacerbate and worsen. According to the psychologist, the applicant’s emotional support serves a critical role in helping [REDACTED] remain stable, allowing her to function at work. In addition, the psychologist states that [REDACTED] will probably need psychological and psychiatric treatment throughout her lifetime and that if she relocated to [REDACTED] with her husband, she would lose the emotional support she currently receives from her extended family members who live in nearby, will have far more difficulty adjusting to living in a new country compared to the average person, and may not receive the ongoing treatment she needs. The psychologist concludes that [REDACTED] suffers from major and serious psychological illness and that her husband serves a critical role in helping her to maintain stability. *Psychological Hardship Evaluation, dated July 30, 2008.*

More recently, a letter from [REDACTED] physical therapist states that on June 20, 2009, [REDACTED] suffered a stroke when she was six months pregnant. According to the physical therapist, [REDACTED] continues to have weakness in her upper and lower extremity, postural deficits, gait deficits, balance deficiencies, decreased range of motion, and impaired activities of daily living. In addition, the therapist states that because she has no use of her left upper extremity and has recall and processing deficits which could affect her decision-making process, it is imperative for her husband to be present as it would be unsafe for her to care for their young child without another adult present. *Letter from [REDACTED], dated November 30, 2010.*

A letter from [REDACTED] physician states that she had a prolonged hospitalization of about a month where she had evacuation of blood on her brain twice, had a C-section to deliver her baby, and developed an MRSA infection. According to the physician, [REDACTED] was discharged with severe intractable headaches and left arm pain requiring a high level of narcotics. The physician contends she continues to suffer from symptoms including, but not limited to: headaches, anxiety, insomnia, weakness, short-term memory problems, and concentration problems. The physician lists at least ten medications for [REDACTED] and contends that “she will not get to the point of being able to solely care for her baby, Evan, without the help of her husband [REDACTED].” The physician states that [REDACTED] continued balance issues, weakness, and left arm hemiplegia requires that she always has someone to help her with the baby. *Letter from [REDACTED], dated April 1, 2010.*

Another letter from a different physician states that after [REDACTED] suffered from the stroke, she subsequently developed infections and was dependent on a ventilator. According to this physician, although [REDACTED] condition has improved, she still requires significant assistance. The

physician states that it is difficult to provide an accurate picture of her ultimate recovery and contends that she needs her husband to help care for her and their child as she is not fully independent. *Letter from* [REDACTED] dated April 28, 2010; *see also Letter from* [REDACTED] dated August 27, 2009 (stating [REDACTED] had a long and complicated hospital course in which she underwent extensive surgeries, treatments, and rehab, and that she continues to need her husband's assistance for her recovery).

Upon a complete review of the record, the AAO finds that the applicant's wife would suffer extreme hardship if the applicant's waiver application were denied. The record shows that [REDACTED] suffers from several serious physical and mental health conditions, including bipolar disorder, attention deficit disorder, and a stroke that has left her unable to care for her child or herself. Three of [REDACTED] physicians and her physical therapist all contend that it is imperative that she have her husband present in order to care for their baby and support her in her recovery from her stroke. Similarly, the psychologist contends [REDACTED] needs her husband to continue to provide emotional stability for her mental health problems. Considering these unique factors cumulatively, the AAO finds that the hardship [REDACTED] will experience if her husband's waiver application were denied is extreme, going well beyond those hardships ordinarily associated with a spouse's inadmissibility to the United States.

It would also constitute extreme hardship for [REDACTED] to move to [REDACTED] to avoid the hardship of separation from the applicant. Relocating to [REDACTED] would disrupt the continuity of her health care and the procedures that are in place to monitor and treat her. Furthermore, according to the psychologist, if [REDACTED] relocated to [REDACTED] it is unlikely she would receive the psychological and psychiatric care she needs. The AAO takes administrative notice that the U.S. Department of State recognizes that medical care in [REDACTED] "remains below western practice standards, and medical facilities outside [REDACTED] have very limited capabilities." *U.S. Department of State, Country Specific Information*, [REDACTED] dated January 28, 2011 (describing a lack of medical specialists, diagnostic aids, medical supplies, and prescription drugs). Moreover, [REDACTED] and the couple's son were born in the United States. [REDACTED] would need to adjust to a life in [REDACTED] a difficult situation made even more complicated given her physical and mental health conditions. In sum, the AAO 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 includes the applicant's misrepresentation of a material fact to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife and child; the extreme hardship to the applicant's wife if he were refused admission; and the applicant's lack of any arrests or 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.