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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

FILE: [REDACTED] Office: MEXICO CITY (SANTO DOMINGO) Date: APR 13 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:

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 \$630. 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,

Michael Humway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Acting 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 the Dominican Republic 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 willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen mother.

The acting district director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated October 14, 2008.

On appeal, the applicant's mother asserts that she is 90 years old, and is suffering from many health problems. The applicant's mother contends that she is suffering emotional hardship as a result of her separation from the applicant. *Statement on Notice of Appeal (Form I-290B)*, undated.

In support of the waiver application, the record includes, but is not limited to, medical documentation, the applicant's mother's naturalization certificate, the applicant's birth certificate, and an approved alien relative petition (Form I-130). The entire record was reviewed and considered in rendering a decision on the appeal.¹

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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) of the Act provides that:

- (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

¹ The record also contains a letter from the applicant's mother written in Spanish without a corresponding English translation. Because the applicant failed to submit certified translations of the documents, 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.

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.

The record reflects that the applicant and her husband divorced on June 17, 1986. On August 20, 1986, the applicant's mother filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The applicant's mother filed a second alien relative petition on behalf of the applicant on August 13, 1992. The petitions were approved on October 29, 1986 and October 28, 1992, respectively. At the time the applicant's mother filed the alien relative petitions, she was a lawful permanent resident.² While there is an immigrant visa preference category available for married sons and daughters of U.S. citizens, there is no immigrant visa preference category for married sons and daughters of lawful permanent residents. See Section 203(a) of the Act, 8 U.S.C. § 1153(a). The applicant's divorce from her spouse rendered her eligible for an immigrant visa by placing her in the second immigrant visa preference category as the "unmarried daughter" of a permanent resident.

On May 5, 1990, the applicant signed a written statement admitting that she divorced her husband to allow her mother to petition for her as an "unmarried daughter." The applicant admitted that she continues to maintain a household with her ex-husband and their children. *Statement of* [REDACTED] [REDACTED] The AAO finds that the applicant's divorce "was entered into for the sole purpose of circumventing the immigration visa preference system." *Matter of Aldecoaotalora*, 18 I&N Dec. 430 (BIA 1983). The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact to procure an immigration benefit.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's U.S. citizen mother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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

² The applicant's mother received U.S. citizenship through naturalization on May 15, 1998.

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's mother asserts that she is a 90 years old, and is suffering from health and "other problems" due to her age. She states that she is close with the applicant and is suffering emotional hardship as a result of their separation. *Statement on Form I-290B*, undated.

The record contains a letter from [REDACTED] stating that the applicant's mother has "(1) Dense Cataract left eye not requires surgery, (2) Glaucoma with good pressure control eye drop, (3) Macular degeneration both eye, which is chronic & stable." *Letter from [REDACTED]* dated November 7, 2008. The applicant's mother also submitted a medical examination report reflecting that her "active problem list" list includes hyperparathyroidism and peripheral vascular disease. Her past medical history includes hypertension, osteoporosis, vitamin B12 deficiency, restless leg syndrome, and legal blindness. *Medical Report*, dated November 8, 2008.

The AAO recognizes that the applicant's 92-year-old mother suffers from a number of chronic medical conditions. However, the record does not contain a letter in plain language from a medical professional listing her mother's prognosis, treatment plans, and how her conditions affect her daily life activities. The applicant's mother indicated that she has a close relationship with the applicant. *See Statement on Form I-290B*. However, she has not stated whether she requires the applicant's presence in the United States to assist with her medical care. The waiver application reflects that the applicant's mother has two other daughters who reside in the United States. The applicant's mother is residing with one of her daughters, Guadalupe Pimentel, a U.S. citizen. Thus, the AAO finds that the applicant has not shown that her mother is suffering medical hardships as a result of her inadmissibility to the United States.

The AAO acknowledges that the applicant and her mother have a close relationship and will experience emotional hardship if they remain separated. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). The AAO finds that the applicant's separation from her mother constitutes emotional suffering, but the applicant has failed to demonstrate that this hardship alone rises to the level of extreme hardship. While almost every case will present some hardship, the fact pattern here is not beyond the ordinary hardship suffered by individuals who are separated as a result of inadmissibility.

Furthermore, the applicant has not asserted, or submitted evidence to demonstrate, that her mother would suffer extreme hardship in the Dominican Republic if she relocated there to maintain family unity. The AAO notes that the applicant's mother is a native of the Dominican Republic, therefore she should have less difficulty adjusting to the language, customs and culture of the country. The AAO acknowledges that the applicant's mother is elderly and suffers from a number of chronic medical conditions, but the applicant has not discussed, or provided evidence to demonstrate, the

standard of medical care available in the Dominican Republic. Accordingly, the AAO cannot determine that the applicant's mother would suffer extreme hardship if she relocated to the Dominican Republic.

In this case, the record does not contain sufficient evidence to show that the applicant's mother would suffer extreme hardship if she is denied admission to the United States. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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 for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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.