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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H5

[Redacted]

FILE: [Redacted] Office: [Redacted] Date: **APR 13 2011**

IN RE: Applicant: [Redacted]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the [REDACTED] 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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and is the daughter of a United States citizen father and a lawful permanent resident mother. She 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 her spouse, parents and child.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 29, 2007.

On appeal, counsel for the applicant states that the applicant's qualifying relative would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion and Attached Statement; Attorney's Brief*.

In support of the waiver, counsel submits two briefs. The record also includes, but is not limited to, employment letters for the applicant's spouse; earnings statements for the applicant's spouse; W-2 Forms for the applicant and her spouse; tax statements; medical records for the mother of the applicant's spouse; published country conditions reports; a psychological evaluation; statements from the applicant's spouse; statements from the applicant; a statement from the applicant's father; a statement from the applicant's mother; medical records for the applicant's parents; criminal documents for the applicant; a bank statement; an apartment lease; a car insurance statement; and a credit card statement. The entire record was reviewed and considered in rendering this decision.

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

- (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.

The record reflects that on December 19, 1993, the applicant gained admission to the United States at the airport in [REDACTED] by presenting a passport and B-2 visa under a false name to United States immigration authorities. *See false passport, visa and Form I-94, Departure Card*. The applicant admitted to using false documentation to gain admission to the United States on her Form I-485. *Form I-485, Application to Register Permanent Residence or Adjust Status*. Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, as her misrepresentation was not material. *Attorney's brief*, dated November 5, 2007. Counsel further states the applicant was unaware of the United States immigration laws and was simply following the advice of a travel agent and her aunt to use false documents. *Id.* The AAO notes that the

Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now USCIS) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

The Board of Immigration Appeals (BIA) has found that if the use of the false identity was for a legitimate reason and was for a prolonged period prior to entry, a line of relevant inquiry was not cut off. *Matter of Gilikevorkian*, 14 I&N Dec. 454, 455 (BIA 1973). The AAO notes that there is nothing in the record to show that the applicant had used her false identity for a legitimate reason and for a prolonged period prior to entry. Additionally, the fact that the false documentation was arranged by a travel agent does not insulate the applicant from liability, as the applicant herself submitted the passport and visa to gain admission into the United States. As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) 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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and parents are the only 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) (“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.

If the applicant's spouse joins the applicant in the [REDACTED] the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of the [REDACTED] *Naturalization certificate*. He naturalized in 1996. *Id.* His father lives in the [REDACTED] and his mother and siblings live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Attorney's brief*, dated November 5, 2007. Counsel asserts that the applicant's spouse suffered physical and emotional abuse at the hands of his father and as a result, has not had contact with him in nearly 17 years. *Attorney's brief*, dated November 5, 2007. Counsel further states that the mother of the applicant's spouse has been diagnosed with cancer and the applicant's spouse wishes to remain geographically close to her in the event of emergencies, to check on her, and to provide emotional support. *Id.* Medical records included in the record document a history of breast cancer for the mother of the applicant's spouse. *Medical records*. The applicant's spouse notes that it would be difficult for him to adjust to the [REDACTED] as he has been in the United States for a long time and the unemployment rate in the [REDACTED] is high. *Statement from the applicant's spouse*, dated October 25, 2007. Counsel further notes that in addition to the poverty, the crime rate in the [REDACTED] is very high. *Attorney's brief*, dated November 5, 2007. The record includes published country conditions reports documenting the high unemployment rates and human rights violations in the [REDACTED] *Published country conditions reports*. When looking at the aforementioned factors, particularly the applicant's spouse's lack of familial ties to the [REDACTED] the length of time he has resided in the United States, the medical condition of his mother as documented by licensed healthcare professionals, and the high levels of poverty and human rights violations in the [REDACTED] as documented by published reports, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the [REDACTED]

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of the [REDACTED] who naturalized in 1996. His father lives in the [REDACTED] and his mother and siblings live in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Attorney's brief*, dated November 5, 2007. The applicant's spouse notes that without the applicant, he would be unable to simultaneously work and attend to his child's needs. *Statement from the applicant's spouse*, dated October 25, 2007. Counsel notes that the applicant's parents reside in the same home as the applicant and her spouse. *Attorney's brief*, dated November 5, 2007. Counsel states that the applicant's parents are unable to drive long distances and are dependent upon the family unit for their social needs. *Id.* While the record does not address whether there are additional family members who can assist with the caretaking responsibilities of the applicant's child and parents, the AAO acknowledges the difficulties of being a single parent as well as the added responsibilities of assisting aging relatives living in the same home.

The applicant's spouse states he does not know how he is going to live without the applicant by his side. *Statement from the applicant's spouse*, dated October 25, 2007. A psychological evaluation notes that the ambiguity of the applicant's immigration status has had a devastating effect upon the applicant's spouse and child and a significant psychological impact on the family as a whole. *Psychological evaluation from [REDACTED] Clinical Psychologist*, dated September 7, 2007. [REDACTED] further states that "it is evident that the applicant and her spouse are experiencing severe emotional distress as a result of her potential removal from the United States and the possible uprooting of the family unit," and recommends that the family engage in family therapy. *Id.* The applicant's spouse further notes that the absence of the applicant would also result in financial difficulties for him. *Statement from the applicant's spouse*, dated October 25, 2007. The record includes W-2 Forms for the applicant's spouse showing he earned \$5843 in 1996 and \$23,378 in 2006. *W-2 Forms*. The record includes a statement from the employer of the applicant's spouse stating he holds the position of Assembly Technician at a rate of \$11.14 an hour for 40 hours a week. *Statement from [REDACTED] Human Resources, Coordinator, [REDACTED]*, dated April 11, 2007. The record also includes a credit card statement, an apartment lease, and a car insurance statement documenting various expenses of the applicant's spouse.

The Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), 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 notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. When looking at the aforementioned factors, particularly the difficulties in caring for a child and aging relatives, the emotional difficulties a separation would cause as documented by a licensed healthcare professional, and the documented financial difficulties a separation would have upon the applicant's spouse, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the applicant has established that her spouse would suffer extreme hardship, the AAO does not find it necessary to address whether her United States citizen father and lawful permanent resident mother would suffer extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's misrepresentation for which she now seeks a waiver. The favorable and mitigating factors are her United States citizen spouse, United States citizen father, lawful permanent resident mother and United States citizen child, the extreme hardship to her spouse if she were refused admission, and her supportive relationship with her family as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant are 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.