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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



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DATE:

Office:

FILE:

IN RE: APR 21 2011

Applicant:

APPLICATION: 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:



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

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, [REDACTED] 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 [REDACTED] who is inadmissible to the United States pursuant to 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Field Office Director*, dated November 4, 2008.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant; statements from family members and friends; a psychological evaluation for the applicant's spouse; a medical letter for the applicant; mortgage and loan statements; student loan statements; a statement from the applicant's spouse; country conditions reports; insurance, bank, and credit card statements; cell phone bills; employment letters for the applicant's spouse; a medical letter for the applicant's child; tax returns and W-2 Forms for the applicant's spouse; and medical bills. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that on December 13, 2001 the applicant procured admission into the United States using her mother's valid passport and visa. *Record of Sworn Statement*, dated August 8, 2007; *Form I-94, Departure Card; Attorney's brief*. As the applicant used false documents to gain admission to the United States, she is 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 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 a qualifying relative, 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 was born in the United States. *Birth certificate*. His parents reside in the United States, as do his sister, nephews and nieces. *Form G-325A, Biographic Information sheet, for the applicant’s spouse; Statement from the applicant’s spouse*, dated August 27, 2007. The applicant’s spouse does not have any family ties outside of the United States. *Statement from the applicant’s spouse*, dated August 27, 2007. He does not speak the [REDACTED] language and asserts that he would be incapable of adapting on any significant level without an understanding of the language. *Id.* He is unfamiliar with [REDACTED] culture and traditions, having been born and raised in the United States. *Id.* The applicant’s spouse notes that he has debts in the United States that he is unable to put on hold. *Id.* The record includes a loan statement, a mortgage statement, and student loan statements documenting these expenses for the applicant’s spouse. The applicant’s spouse further notes that he would have limited success in finding work in the [REDACTED] due to his inability to speak the language. *Statement from the applicant’s spouse*, dated August 27, 2007. A published country conditions report included in the record states that the [REDACTED] economic transformation is not yet complete and that the government still faces serious challenges in completing industrial restructuring, increasing transparency in capital and market transactions, transforming the housing sector, reforming the pension and health care systems, and solving serious environmental problems. *Background Note: [REDACTED] U.S. Dept. of State*, dated March 2007. When looking at the aforementioned factors, particularly the applicant’s spouse’s lack of familial and cultural ties to the [REDACTED], his lack of language abilities and

the effect this would have regarding his adjustment to the [REDACTED] his documented financial obligations in the United States, as well as the documented country conditions 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 was born in the United States and his parents reside in the United States, as do his sister, nephews and nieces. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Statement from the applicant's spouse*, dated August 27, 2007. According to a psychological evaluation included in the record, the emotional impact upon the applicant's spouse, the applicant, and the children having to live separate from one another would greatly impact the emotional well-being of all members of this family. *Statement from [REDACTED] LCSW*, dated November 30, 2008. While the AAO acknowledges this statement, it notes that the submitted letter is based on a single interview between the applicant's spouse and the Licensed Clinical Social Worker. Moreover, the letter fails to provide a diagnosis or detailed information about the type or extent of the impairment these conditions are causing. Accordingly, the submitted evaluation does not reflect the insight and elaboration that would result from an established relationship with a mental health professional, thereby rendering the Licensed Clinical Social Worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

At the time of the submission of the appeal, the applicant was pregnant with her second child. *Statement from [REDACTED] M.D.*, dated November 13, 2008. The applicant states that her spouse does not have the means or funds to raise two children without her. *Statement from the applicant*, dated November 18, 2008. The record includes documentation of the various expenses of the applicant's spouse, including loan and mortgage statements, an insurance statement, credit card statements, and cell phone bills. The record also includes a W-2 Form for the applicant's spouse showing his earnings in 2006 to be \$31,774.16. While the AAO acknowledges this documentation, it notes that the applicant is a stay-at-home mother who is the primary caretaker for their child while the applicant's spouse works full-time to support their family. *Statement from [REDACTED] LCSW*, dated November 30, 2008. As such, the applicant's spouse is not financially dependent upon the applicant. Furthermore, there is nothing in the record to address the costs of daycare and whether the additional members of the applicant's spouse's family would be able to assist with the childcare responsibilities. According to the Licensed Clinical Social Worker, it will be difficult for the applicant's spouse to support his family in the [REDACTED] and maintain his own home in the United States. *Id.* The record does not contain evidence that the applicant would be unable to contribute to her family's financial well-being from the [REDACTED]. As such, when looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he remains in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(6)(C)(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(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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.