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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**

#5

FILE: [REDACTED] Office: CHICAGO, IL

Date: **APR 27 2011**

IN RE: Applicant: [REDACTED]

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:

[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 must 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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico 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 fraud or 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 her husband and children 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 September 9, 2008.

On appeal, counsel contends the director incorrectly stated that the applicant failed to disclose her misrepresentation. In addition, counsel contends the applicant established the requisite hardship and that the director failed to discuss or consider the applicant's ability to raise her children in Mexico or the financial and psychological impact the denial of the waiver application would have on the applicant's husband.

The record contains, *inter alia*: a letter and an affidavit from the applicant's husband, [REDACTED] copies of [REDACTED] pay stubs, tax records, and other financial documents; copies of the birth certificates of the couple's two U.S. citizen children; several letters of support, including from [REDACTED] family members and the couple's church; a letter from [REDACTED] physical therapist; a letter from [REDACTED] employer; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Mexico; 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 concedes, that she entered the United States in 1995 by car by presenting identification that was not hers to an immigration official at the border in Juarez, Mexico. *Record of Sworn Statement*, dated May 7, 2003. 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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.

In this case, the applicant’s husband, [REDACTED] states that he was born in Chicago and has lived in Chicago his entire life. He states that his wife has lived in the United States since she was fifteen years old. He contends he cannot hold his family together without his wife. He contends he has two herniated discs in his back, which would render him useless in the farming industry in Mexico. In addition, [REDACTED] contends he cannot relocate to Mexico because he has no reading or writing skills in Spanish and, thus, it would be impossible for him to find a job there. He states his daughter cannot relocate either because they would both lack medical insurance. *Letter from* [REDACTED] dated June 23, 2003.

A letter from [REDACTED] physical therapist states that he will have physical therapy sessions three times a week for the next five weeks. *Letter from [REDACTED] dated April 18, 2006.* A copy of a Physical Therapy Order states that [REDACTED] was diagnosed with herniated discs and needs therapy three times per week for four weeks. *Neurological Surgery & Spine Surgery, S.C., Physical Therapy Orders, dated September 12, 2006.*

A letter from [REDACTED] father states that [REDACTED] is their oldest of three children. According to his father, [REDACTED] "takes care of [his parents] in every aspect." [REDACTED] father purportedly suffers from depression and [REDACTED] sees his parents every day. *Letter from [REDACTED] dated October 20, 2003.*

After a careful review of the record, the AAO finds that if [REDACTED] had to move to Mexico to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] was born in the United States, has lived in the United States his entire life, and, according to [REDACTED] does not read or write in Spanish. In addition, the record shows that [REDACTED] has herniated discs in his back for which he was receiving physical therapy. Furthermore, the record shows that [REDACTED] has worked for the same employer for fourteen years, since May of 1997. *Letter from [REDACTED] dated January 18, 2008.* Moreover, the AAO takes administrative notice that the U.S. Department of State has recognized that between 2006 and 2009, the number of narcotics-related murders in the state of Durango, where the applicant was born and where her mother continues to live, has increased ten-fold and urges U.S. citizens to defer unnecessary travel there. *U.S. Department of State, Travel Warning, Mexico, dated September 10, 2010.* Considering all of these unique factors cumulatively, the AAO finds that if [REDACTED] had to move to Mexico, the hardship he would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. [REDACTED] contentions that his family would fall apart without his wife and that he needs his wife for emotional support are difficulties that are typical of individuals separated as a result of inadmissibility or exclusion and do not rise to the level of extreme hardship based on the record. Regarding the herniated discs in his back, the letter from his physical therapist fails to provide sufficient details regarding his condition. For instance, the letter does not address the prognosis or severity of his condition. In addition, the letter does not suggest, and [REDACTED] does not claim, that he is limited in his daily activities, that he cannot work or care for his children, or that he requires his wife's assistance in any way. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

Regarding the financial hardship claim, there is insufficient evidence showing that [REDACTED] hardship would be extreme. According to a letter from his employer, [REDACTED] has worked for Alkco Lighting since May 1997 and earns an annual salary of \$41,642. *Letter from [REDACTED] dated January 18, 2008.* His employer contends that his future with the company is strong. *Id.* In addition, [REDACTED] submitted a Form I-864, affirming he would financially support the applicant based on his salary of \$44,636. *Affidavit of Support under Section 213A of the Act (Form I-864), dated*

July 18, 2007; *see also Form I-864*, dated April 29, 2003 (affirming he would financially support the applicant based on his salary of \$33,870). Regarding [REDACTED] father statement that [REDACTED] takes care of his parents, his father does not specifically address to what extent, if any, [REDACTED] financially supports them. Although the AAO does not doubt that [REDACTED] will suffer some financial hardship, and recognizes that the family's standard of living will decrease, the record does not show this hardship to be extreme.

To the extent the couple has two U.S. citizen daughters, and the record shows that [REDACTED] has a child from a previous marriage, as stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to [REDACTED] the only qualifying relative in this case. There is insufficient evidence in the record to show that caring for his children as a single parent would cause extreme hardship to [REDACTED]. Although [REDACTED] contends that his daughter cannot move to Mexico because she would lack medical insurance, there is no evidence in the record that any of [REDACTED] children have any medical problems. In addition, the record shows that both of [REDACTED] parents as well as his brother live on the same street as [REDACTED] and, according to [REDACTED] father, [REDACTED] sees his parents every day. *Letter from [REDACTED] and [REDACTED] supra; see also Letter from [REDACTED] undated* (indicating their address is [REDACTED]; *Letter from [REDACTED] brother [illegible]*, undated (indicating he lives at [REDACTED]). There is no contention that [REDACTED] family cannot assist and support [REDACTED] in caring for his children.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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, 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.