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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**

HL5



FILE:



Office: SACRAMENTO, CALIFORNIA

Date: FEB 18 2011

IN RE:

Applicant:



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:



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, Sacramento, California, and 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 Taiwan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring an immigration benefit through fraud or willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen and the mother of a United States citizen child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 husband, child, and parents-in-law.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 19, 2008.

On appeal, the applicant, through counsel, claims that "[t]he facts and circumstances of [the applicant's husband's] case demonstrate the extreme hardship that would result if [the applicant] were denied the waiver." *Brief attached to Form I-290B*, dated October 17, 2008.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, medical documents for the applicant's daughter and mother-in-law, documents regarding the applicant's parents-in-law's Medicare and social security, insurance documents, banking and investment statements, tax documents, and a list of countries by gross domestic product. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present case, the record indicates that on or about May 10, 2004, the applicant submitted a nonimmigrant visa application claiming her marital status as "single," when in fact she was married to her current husband. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 child 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 United States Citizenship and Immigration Services (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 (Board) 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 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.

The first prong of the analysis addresses hardship to the applicant’s spouse if he relocates to Taiwan. In a statement dated August 6, 2008, the applicant states if her husband had to relocate to Taiwan with her it “would cause extreme hardship on his career as well as his parents.” The applicant states that her husband “has had a steady advancement in his career as a Software Engineer and if he were forced to go back to Taiwan, it would be extreme[ly] difficult for him to re-establish his career and his future.” Counsel states that the applicant’s husband “reasonably anticipates major economic upheaval in leaving his employment here, and a corresponding difficulty in finding equivalent employment in Taiwan.” Counsel claims that the applicant’s husband would “realize a major loss through [the] sale of

his home” and “through a drop in his standard of living as a result of the difficulty in finding employment.” In an undated statement, the applicant’s husband states he will lose at least \$250,000 if he sells his house. The applicant states her parents-in-law do not want to move back to Taiwan “since they are receiving most of their medical care here in the U.S. and they are entitled to receiving [sic] benefits available to them.” The applicant’s husband states all of his family has medical insurance in the United States. Counsel states the applicant’s husband “faces the likelihood of severe health consequences to his infant daughter and ailing parents if they are forced to uproot and follow him to Taiwan,” he “reasonably fears for the ability of his daughter and his mother to receive the quality of medical care that they require,” and “that they will not be able to secure medical insurance or to pay for the unavoidable medical expenses that they will be facing.” The AAO notes the applicant’s husband’s concerns regarding relocating to Taiwan.

Counsel claims that the applicant’s husband “is a U.S. citizen with an ailing infant daughter and elderly parents living in his household, dependent on his care.” Counsel states the applicant’s daughter “is currently in delicate health that requires close monitoring and familial support.” In a letter dated September 26, 2008, [REDACTED] states the applicant’s daughter’s “weight has decreased significantly to below the 3<sup>rd</sup> percentile. She has been evaluated by specialists, but her work up and evaluation has been normal. She continues to develop normally.” Additionally, the AAO notes that medical documentation in the record establishes that in 2007, the applicant’s daughter suffered from food allergies and eczema. The applicant states she wants her daughter to be educated in the United States. The AAO notes the concerns for the applicant’s daughter.

The applicant’s husband states his parents have been living with him since 1997, he financially and physically cares for them, and his father receives \$592 a month in social security. The AAO notes that submitted tax returns establish that the applicant’s husband claims his parents as dependents. Counsel states the applicant’s husband faces “the prospect of abandoning his parents here and depriving them of his support.” Counsel also states the applicant’s mother-in-law “has advanced kidney disease that requires constant care.” In a letter dated September 24, 2008, [REDACTED] states the applicant’s mother-in-law is “suffering from a failed kidney transplant, resulting in End Stage Renal Disease. She requires Chronic Maintenance Hemodialysis three times a week in order to maintain life. In addition, her other ailments include Labile Hypertension and Hyperlipidemia.” [REDACTED] states the applicant’s mother-in-law “requires constant assistance and close supervision by her family members for the remainder of her life.” The applicant’s husband states his mother “cannot live on her own and needs to be taken good care of.” The AAO notes the significant medical issues of the applicant’s mother-in-law.

The AAO acknowledges the claims made regarding the difficulties the applicant’s husband and his family would face in relocating to Taiwan. The AAO notes that the applicant’s husband has been residing in the United States for many years. However, the AAO observes that the applicant’s husband is a native of Taiwan and the record does not establish that he does not speak the native language or that he has no family ties to Taiwan. Additionally, other than a list of countries by gross domestic product, no country conditions materials or documentation has been submitted to establish that the

applicant's husband would be unable to obtain employment in Taiwan. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO notes the applicant's daughter may be having difficulty gaining weight; however, [REDACTED] reports that she is developing normally. Additionally, the record does not include supporting documentary evidence that the applicant's daughter cannot be monitored for her medical issues in Taiwan. Further, the AAO notes the medical conditions of the applicant's mother-in-law; however, no documentation was submitted establishing that she cannot receive dialysis in Taiwan or that if she remains in the United States, there is no one who can help care for her. Additionally, the AAO notes that the applicant has not shown that her husband would endure additional hardship in Taiwan due to lacking the ability to reside with or assist his mother. The AAO also notes that no medical documentation has been submitted establishing that the applicant's father-in-law suffers from any medical conditions. Further, the AAO finds that the applicant has not shown that hardship to her daughter or parents-in-law will elevate her husband's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Taiwan.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. The applicant's husband states if the applicant returns to Taiwan, "no one would be able to take care of [his] daughter and [his] parents because [he] [has] to work full time to support the family." He claims that he could not afford to hire a nanny to care for his daughter and parents. The AAO notes that the applicant's husband states he makes over \$100,000 annually. The applicant's husband states his daughter is "on a strict diet," "her daily meals have to be carefully prepared," and the applicant takes care of her. [REDACTED] claims that the applicant "has been instrumental to [her daughter's] stable weight and [he] believe[s] that if [the applicant] were to return to Taiwan, it would be detrimental to [her daughter's] growth and well being." [REDACTED] also claims that the applicant's departure "would result in significant distress and possible emotional consequences to [the applicant's daughter]." Counsel claims that the applicant's daughter and parents-in-law will suffer "severe health consequences . . . if they are deprived of [the applicant's] aid and support."

The AAO notes that the applicant's daughter and parents-in-law may suffer some hardship in being separated from the applicant. Additionally, the AAO notes the claims of emotional hardship to the applicant's child; however, the record does not establish that her emotional hardships go beyond the typical effects of separation. Further, the AAO notes that the applicant's mother-in-law's continuity of care is a significant factor in the applicant's husband's relocation to Taiwan; however, as noted above, the record does not establish that the applicant's mother-in-law cannot relocate to Taiwan with her son or the impact it would have on the applicant's husband. The record also does not establish that based on the applicant's husband's annual salary of \$100,000, that he cannot afford to hire someone to help care for his daughter and parents. The AAO notes that the applicant's husband may experience some financial hardship in being separated from the applicant; however, the applicant has not provided sufficient documentation to establish her husband's complete financial obligations or economic

situation. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she would be unable to obtain employment in Taiwan and, thereby, reduce the financial burden on her husband. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband will suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 under section 212(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.