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

H5

FEB 23 2011

FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

Applicant:

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:

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
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico 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 a benefit under the Act by fraud or willful misrepresentation. The applicant is married to a United States 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 in the United States with her spouse and children.

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 July 30, 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*.

In support of the waiver, counsel submits two briefs. The record also includes, but is not limited to, statements from the applicant; bank statements; insurance statements; a telephone bill; an employment letter for the applicant's spouse; earnings statements for the applicant's spouse; tax statements; W-2 Forms; a life insurance policy; statements from the applicant's spouse; statements from the mother of the applicant's spouse; medical records for the mother of the applicant's spouse; statements from family members and friends; a statement from a church; statements from the children's schools; achievement certificates for the applicant's children; school records for the applicant's children; a home loan statement; achievement certificates for the applicant; and a published country conditions report. The entire record was reviewed and considered in rendering this decision.

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 the applicant filed a Form I-589, Request for Asylum in the United States, in October 1994 stating she was a Guatemalan national, when in fact she was a Mexican national. *Form I-589*. On a Form G-325A, Biographic Information sheet, the applicant also falsely stated her nationality was Guatemalan. *Form G-325A, Biographic Information sheet*, dated October 6, 1994. Counsel notes that the applicant also provided a false place of birth on her employment authorization application. *Attorney's brief*. Counsel asserts that the applicant was a victim of notary fraud and signed the documents while they were blank. *Id.* Counsel also asserts that during her adjustment of status interview, the applicant timely retracted her misrepresentation. *Id.* Prior to addressing

whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. The applicant admits that she is a national of Mexico, not Guatemala. *Birth certificate; Attorney's brief.* The fact that the Form I-589, Form G-325A and employment authorization application were filled out by a notary does not insulate the applicant from liability, as the applicant herself signed and submitted the forms to obtain an immigration benefit in the United States. Regarding counsel's assertion that the applicant made a timely retraction of her misrepresentation during her adjustment of status interview, the AAO notes that the applicant filed her Form I-485, Application to Register Permanent Residence or Adjust Status on January 2, 2007, while her asylum application was filed in October 1994. *Form I-485; Form I-589.* The record includes an asylum interview notice stating that the applicant was scheduled for an asylum interview on February 2, 1995, but it is unclear whether the applicant appeared at the interview and attempted to retract the false statements made on her application. *Asylum Interview Notice*, dated January 24, 1995. In applying for adjustment of status, the burden of proving admissibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to establish that any retraction the applicant made during her adjustment of status interview in 2007 was timely, and therefore finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act.¹

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

¹ The AAO further notes that the applicant procured admission to the United States as a B2 visitor on August 4, 2003 despite the fact that she had been residing with her family and working in the United States since 1994. It thus appears that the applicant concealed her intent to resume her residence and employment in the United States, a material fact, when she was inspected by an immigration official and admitted as a B2 visitor in 2003.

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 Mexico, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Mexico. *Naturalization certificate*. His father lives in Mexico and his mother lives in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. Apart from his estranged father, the applicant's spouse has no immediate family in Mexico. *Attorney's brief*. The applicant's spouse has lived in the United States since 1988. *Statement from the applicant's spouse*, dated May 23, 2007. The mother of the applicant's spouse is disabled and resides in the home of the applicant and her spouse. *Statement from the applicant's spouse*, dated August 20, 2007. A statement from her physician notes that the mother of the applicant's spouse is morbidly obese and has left hip avascular necrosis. *Statement from [REDACTED]*, dated August 10, 2007. Because she does not have the ability to walk without pain and the assistance of her walker, she is not able to exercise much. *Id.* Her physician believes she will need bariatric surgery to help her lose the weight. *Id.* Additionally, she has seen two orthopedic surgeons and has been told that she needs to lose weight before she can have hip replacement surgery. *Id.* She suffers from significant chronic left hip pain because of her condition. *Id.* The mother of the applicant's spouse states that she does not know how she can live without the applicant and her spouse. *Statement from the mother of the applicant's spouse*, dated August 20, 2007. The applicant's spouse notes that he and his spouse are the only ones in their family able to care for his mother. *Statement from the applicant's spouse*, dated May 23, 2007. When looking at the aforementioned factors, particularly the applicant's spouse's lack of family ties in Mexico, the length of time he has resided in the United States, and the documented health conditions of his mother and her dependence upon the applicant's spouse, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Mexico.

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 Mexico. *Naturalization certificate*. His father lives in Mexico and his mother lives in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The mother of the applicant's spouse is disabled and resides in the home of the applicant and her spouse. *Statement from the applicant's spouse*, dated August 20, 2007. A statement from her physician notes that the mother of the applicant's spouse is morbidly obese and has left hip avascular necrosis. *Statement from [REDACTED]* dated August 10, 2007. Because she does not have the ability to walk without pain and the assistance of her walker, she is not able to exercise much. *Id.* Her physician believes she will need bariatric surgery to help her lose the weight. *Id.* Additionally, she has seen two orthopedic surgeons and has been told that she needs to lose weight before she can have hip replacement surgery. *Id.* She suffers from significant chronic left hip pain because of her condition. *Id.* The applicant's spouse asserts that without the applicant, he would have the entire burden of caring for his mother by himself. *Statement from the applicant's spouse*, dated August 20, 2007. The applicant's spouse states that providing for his disabled mother and raising his two children in the best possible manner seems almost impossible. *Statement from the applicant's spouse*, dated May 23, 2007. The record includes W-2 Forms for the applicant's spouse showing his earnings to be \$3,414.96 in 2003, \$34,134.80 in 2004, and \$35,612.96 in 2005. *W-2 Forms*. The record also includes documentation showing various expenses of the applicant's spouse. *See insurance statements; a telephone bill; and a home loan statement*. Counsel notes that the applicant's spouse

would suffer emotionally if separated from the applicant. *Attorney's brief*, dated September 11, 2007. The applicant's spouse notes that he is quietly suffering through depression, anxiety, a feeling of worthlessness and helplessness. *Statement from the applicant's spouse*, dated May 23, 2007. While the record does not include a psychological evaluation of the applicant's spouse from a licensed healthcare professional, the AAO observes that the record includes statements from a family member and a friend that observe the applicant's spouse to be withdrawn and quiet, depressed and emotionally stressed. *Statements from a family member and a friend*, dated May 23, 2007. In addition, 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 documented health conditions of the mother of the applicant's spouse and her dependence upon the applicant's spouse, the financial difficulties of the applicant's spouse, and the emotional difficulties a separation would impose 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.

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 and her use of a Border Crossing Card to obtain admission as a B2 visitor in 2003. The favorable and mitigating factors are her United States citizen spouse and children, the extreme hardship to her spouse if she were refused admission, her supportive relationship with her spouse and children as documented in the record, and her apparent lack of a criminal 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.