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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., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: MEXICO CITY, MEXICO (PANAMA CITY, PANAMA) Date: JAN 0 5 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 District Director, Mexico City, Mexico. The decision 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 Ecuador 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 fraud or the willful misrepresentation of a material fact in order to gain benefit under the Act and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen (USC) and 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) and section 212(a)(9)(B)(v) of the Act, in order to reside in the United States with her United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated August 15, 2008.

On appeal, counsel asserts that the applicant's husband and her children would suffer extreme emotional and financial hardship if the applicant's waiver application is denied. *See Form I-290B,* dated September 12, 2008, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, affidavits from the applicant and her spouse, supportive letters and statements from family and friends, and copies of medical records for the applicant and her daughter, some of which are in the Spanish language with no accompanying English translation,[1] and a copy of the U.S. Department of State Country Report on Human Rights Practices on Ecuador for 2007. The entire record was reviewed and considered in rendering this 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.

Section 212(i) of the Act provides that:

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[1] 8 CFR section 103.2(b)(3) provides that any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

> (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....

Section 212(a)(9) of the Act provides in pertinent part:

> (B) Aliens Unlawfully Present -
>
> (i) In general
>
> Any alien (other than an alien lawfully admitted for permanent residence) who- ....
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> ....
>
> (v) Waiver
>
> The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record reflects that on April 10, 2002, the applicant was admitted into the United States as a B-2 visitor with authorization to remain in the country until October 9, 2002. The applicant remained in the United States until November 2005, when she departed to Ecuador using his sister-in-law's passport. The applicant accumulated unlawful presence in the United States from October 9, 2002, the date the authorized period of admission expired, until November 2005, when she left for Ecuador. The record also reflects that the applicant misrepresented her length of stay in the United States to an immigration official by obtaining a fraudulent Ecuadorian entry stamp in her passport and she attempted to use the passport to procure entry into the United States. On February 20, 2007, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf. On May 31, 2007, the Form I-130 was approved. On February 22, 2008, the applicant filed a Form

I-601. On August 15, 2008, the District Director denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to a qualifying relative.

The AAO notes that the applicant does not dispute that she misrepresented her length of stay in the United States in order to gain entry into the United States and was unlawfully present in the United States for a period of more than one year; thus, the AAO affirms the District Director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act. Since the criteria for a waiver of both section 212(i) and section 212(a)(9)(B)(v) are the same, only one hardship analysis is necessary.

A waiver of inadmissibility under section (212)(i) or 212(a)(9)(B)(v) 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-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.

In this case, the record reflects that the applicant's husband, [redacted] is a 37-year-old native of Morocco and citizen of the United States. The applicant and her husband were married in Guayaquil, Ecuador on February 6, 2007 and they have one child. The record reflects that the applicant has another child from a prior marriage. The applicant and her two children are currently residing in Ecuador. [redacted] asserts that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, [redacted] asserts that he loves his wife and family, and that it has been extremely difficult for him to remain in the United States without them. [redacted] asserts that he is saddened by the separation from his family, especially his daughter, who was born in Ecuador, and that although he has visited his family many times there, he wants them back in the United States to live with him. [redacted] also asserts that he is concerned about the health and well-being of the applicant and their children because of the "inferior medical system" in Ecuador. *See Statement and Affidavit from* [redacted], dated February 12,

2008 and October 13, 2008. asserts that on October 28, 2007, his daughter, spent three nights in the hospital for pneumonia, and on September 26, 2008, while he was in Ecuador visiting his family, had a medical emergency and that although she received treatment for the emergency, "her exact condition is still undetermined." Regarding financial hardship, asserts that it has been a financial strain on him supporting two households, one in Ecuador and one in the United States, and that he has incurred additional expenses of traveling to and from Ecuador to visit his family. *See Statement from* dated February 12, 2008.

While the AAO acknowledges that separation from the applicant has caused various difficulties for it finds the evidence in the record insufficient to demonstrate that the challenges encountered by considered cumulatively, meet the extreme hardship standard. First, while the emotional hardship of separation is apparent from statement, affidavit and supportive letters, the applicant did not provide medical records, detailed testimony, or other evidence to show that the emotional hardships he faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Second, the record does not contain information regarding the applicant's family's income and expenses. Given the lack of information about the family's finances, the AAO cannot conclude that family separation has caused extreme financial hardship to Finally, the hardships faced by the children as a result of family separation are not calculated in the extreme hardship analysis, except to the extent that these hardships impact In this case, asserts that he is concerned about his daughter's health and well-being because of the "inferior medical system" in Ecuador. The applicant has not provided evidence to demonstrate that their daughter has not or will not receive adequate medical care in Ecuador and that the impact on would render his hardship extreme. Accordingly, the applicant has failed to established extreme hardship to her spouse.

Regarding relocation, asserts, "If this appeal is denied, I will move to Ecuador. As such, my quality of life will lower substantially. . . This causes me concern for my daughter, for although my daughter will grow up in Ecuador with two parents, she will do so in a country where woman are no more than a second class citizen and with substandard health care." *See Affidavit of* dated October 13, 2008. also asserts that he would suffer racism and hardship because he does not speak the language, there are few jobs there, and outsiders are not welcomed. *Id.* The record contains a copy of U.S. Department of State Country Report on Human Rights Practices on Ecuador for 2007.

The AAO notes that although it appears that relocation to Ecuador could cause some challenges to the evidence in the record does not demonstrate that relocation would cause him extreme hardship. The country condition report in the record provides a general overview of human rights abuses in Ecuador, but does not demonstrate that the applicant or her husband would be targeted for discrimination, violence or abuse. The report does not demonstrate that relocation to Ecuador would result in severe developmental problems for the applicant's children or that her spouse would experience extreme emotional hardship because of their children's struggle to adapt to the conditions in Ecuador. Additionally, the applicant's spouse has been traveling to Ecuador since 2007, when he and the applicant got married there and he has indicated that he will move to Ecuador

to live with the applicant and their children. Based on the record before it, the applicant has failed to establish that relocation to Ecuador would cause extreme hardship to her spouse.

In sum, although claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.