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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
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Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]

Office: BALTIMORE, MD

Date:

MAR 16 2011

IN RE: [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).

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of El Salvador 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 having sought a benefit under the Act through fraud or willful misrepresentation. She is the daughter of a U.S. citizen and the mother of two U.S. citizens. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *District Director's Decision*, dated January 18, 2008.

On appeal, counsel asserts that the District Director erred in denying the applicant's waiver request as her mother will suffer extreme hardship as a result of her inadmissibility. *Form I-290B, Notice of Appeal or Motion*, dated February 15, 2008.

The record of proceeding includes, but is not limited to, the following evidence: counsel's briefs; statements from the applicant, her mother, her daughter, her younger son and her sisters; medical documentation relating to the applicant, her mother and her sisters; online articles on atrial fibrillation, arthritis and Coumadin; an employment letter for the applicant; tax returns and W-2 forms for the applicant; letters of support from friends and coworkers of the applicant; and country conditions materials relating to El Salvador. The entire record was reviewed and all relevant evidence considered in reaching this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record reflects that on October 9, 2001 the legacy Immigration and Naturalization Service (INS) approved the applicant for lawful permanent residence, based on her claim to be the unmarried daughter of a U.S. citizen and, therefore, eligible for immigration to the United States under the first of the numerically-limited family preferences controlling immigration to the United States. On September 16, 2002, the INS rescinded the applicant's status after learning that she was married. The applicant's claim to be unmarried allowed her to adjust to lawful permanent resident status years earlier than would have been the case had she sought admission as the married daughter of a U.S. citizen under the third of the family-sponsored immigration preferences. As the applicant obtained a

benefit under the Act through fraud of the willful misrepresentation of a material fact, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act and must seek a section 212(i) waiver of inadmissibility.

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 mother 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*, 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 (BIA) 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel contends that conditions in El Salvador would result in hardship for the applicant's mother. She asserts that both violent and petty crimes are prevalent throughout El Salvador and that U.S. citizens have been among the victims of these crimes. Counsel also states that medical care in El Salvador would be problematic for the applicant's mother as few private hospitals have an environment that would be acceptable to U.S. citizens and that not all medicines found in the United States are available in El Salvador.

Included in the record is a March 6, 2008 medical statement issued by [REDACTED] who reports that he has examined the applicant's mother and has reviewed her medical records from a local clinic. [REDACTED] states that the applicant's mother suffers from atrial fibrillation and takes Coumadin to reduce the risk of stroke. He notes that as a result of taking a blood thinner, the applicant's mother has a history of bleeding complications. [REDACTED] also reports that the applicant's mother has osteoarthritis and suffers from chronic and debilitating pain. He states that her right knee is deformed and that she can only walk with a cane. The record contains numerous medical records that support [REDACTED] statements.

The record also includes an October 3, 2007 Department of State Country Specific Information report on El Salvador that supports counsel's claims regarding the state of the country's medical care. The AAO also notes that El Salvador is one of the countries whose nationals are eligible for Temporary Protected Status (TPS) in the United States. The current designation extends TPS coverage to Salvadoran citizens until March 9, 2012, based on the temporary but substantial disruption of living conditions in El Salvador that resulted from the multiple earthquakes that ravaged the country in 2001 and which continue to prevent El Salvador from accommodating the return of its nationals.

Having reviewed the evidence of record, the AAO notes the applicant's mother's age of 81 years; her serious medical conditions and limited mobility; and the conditions in El Salvador that have resulted in its continued designation as a TPS country, as well as the lack of readily available medical care. When these factors and the hardships normally created by relocation are considered in the aggregate, the AAO finds that the applicant's mother would experience extreme hardship if she returned to El Salvador with the applicant.

Counsel also contends that the applicant's mother would suffer extreme hardship if the applicant's waiver application is denied and she remains in the United States. She states that the applicant's mother is an elderly, sick, disabled woman for whom the applicant has provided care since 1999 and that the applicant's sisters are *neither capable of assisting their mother in the applicant's absence, nor willing to do so.*

In his March 6, 2008 statement, [REDACTED] reports that the applicant's mother is unable to perform the activities of daily life, such as bathing and dressing. He further states that because the applicant's mother takes [REDACTED] and has a history of bleeding complications, she is at risk of serious injury if she falls and should not live in an environment where she must walk up or down stairs. [REDACTED] also indicates that separation from the applicant would add to the pain and suffering her mother already experiences on a daily basis and that her wellbeing is, in part, dependent on her emotional connection to the applicant.

The record includes statements from the applicant's sisters, both dated February 15, 2008, who indicate that they are unable to provide for their mother's care. The applicant's oldest sister states that, although their mother lived with her until 1999, she would be unable to take her back if the applicant is removed because she is too ill, physically and emotionally. She states that she must pay attention to her husband and daughter, whom she neglected when her mother lived in her home. She also indicates that her mother previously lived in her basement but ceased to be able to use the stairs *once she developed arthritis.* The applicant's middle sister claims that she is unable to care for her mother as she and her husband do not earn much income and live in the basement of someone else's house. She asserts that her mother would be unable to live with the basement's cold or the stairs. She also indicates that she no longer enjoys good health as the result of an automobile accident and that her older sibling is suffering from mental problems.

The record includes medical documentation that demonstrates the applicant's oldest sister was, in May 2007, treated on an emergency basis at a local hospital in connection with a fall, after which she

experienced chest pain and shortness of breath. Emergency room records indicate that in addition to being found to be suffering from chest pain, the applicant's oldest sister was also diagnosed with depression. On November 22, 2007, the applicant's oldest sister was again treated on an emergency basis, this time for a seizure, and was prescribed anti-seizure medication. A November 26, 2007 medical referral form indicates that this sibling has been referred for consultation and treatment of depression. The record further establishes that the applicant's middle sister was injured in an automobile accident on November 12, 2006 and was still being treated for the injury she sustained in that accident on December 20, 2007.

In an October 17, 2006 statement, the applicant's mother describes her life with the applicant who, she states, takes care of her in "every detail." She also states that the applicant takes her to the hospital any time she needs to go and that the applicant accompanies her to her doctor and speaks on her behalf because she does not speak English. The applicant's mother asserts that she cannot live with her oldest daughter because she would have to live in the basement, which is very cold, and that this daughter and her husband are in the process of selling their home. She notes that her middle daughter and her husband live in a basement and that the humidity in the basement and the stairs would be very bad for her arthritis.

Having reviewed the record, the AAO finds it to establish, by a preponderance of evidence, that the applicant's mother's health precludes her from living alone and that the applicant's sisters are unable and/or unwilling to provide their mother with the care she requires on a daily basis. We further take note of the disruptive impact that the applicant's removal would have on her elderly mother's daily life and healthcare regimen. When these specific hardship factors are combined with the normal emotional hardship that results whenever family members are separated, we find the record to demonstrate that the applicant's mother would experience extreme hardship if she remained in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service

in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentation regarding her marital status at the time she applied for adjustment of status, her unlawful entry into the United States in 1986, and her unlawful residence and employment until receiving TPS. The favorable factors in the present case are the applicant's close family ties to the United States; the extreme hardship that her U.S. citizen mother would suffer if she is denied a waiver of inadmissibility; the applicant's consistent record of lawful employment since at least 1991, her long-term payment of federal and state taxes; the absence of a criminal record or offense; the regard in which she is held by her family, friends and coworkers, as indicated by their submitted statements; and her exemplary employment history, which is established by the award notice and certificate of appreciation, as well as the letters from her employer, found in the record.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, we conclude that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal will be sustained.