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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  
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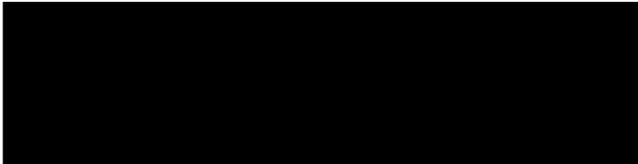
**MAR 28 2011**

IN RE:



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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Canada who misrepresented her intent to immigrate to the United States. The applicant 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). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 14, 2009.

On appeal, the applicant asserts her spouse will suffer extreme hardship if she is removed from the United States. *Form I-290B*, received October 15, 2009.

The record contains, but is not limited to, the following evidence: statements from the applicant; statements from the applicant's spouse; a statement from the applicant's step-daughter; statements from friends and associates of the applicant; a copy of a birth certificate for the applicant's daughter; a statement from [REDACTED], dated January 12, 2011; a copy of a Cytogenetics Report for the applicant's daughter, dated September 16, 2010; a copy of a letter from the County of Chenango Department of Public Health, New York, dated January 13, 2011, regarding the applicant's daughter; a statement from [REDACTED], NP, of the U.S. Department of Veteran's Affairs, dated September 22, 2009; a letter to the applicant's spouse from U.S. Department of Veteran's Affairs regarding disability status; a statement from [REDACTED] dated September 24, 2009; copies of court records relating to the applicant's 1991 conviction for mischief in Canada; and financial records and documents filed in relation to a Form I-864 filed on behalf of the applicant.

The entire record was reviewed and all relevant evidence considered in rendering 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 indicates that the applicant entered the United States on July 29, 2007, as a B-2 nonimmigrant visitor for pleasure. On August 3, 2007, the applicant married her spouse in the United States and he filed a Form I-130 on her behalf on August 30, 2007. The applicant states on

appeal that, upon entry, she was not asked the reason for her entry, and that based on a sudden change of events after she entered she married her spouse.

Although the AAO is not bound by the Foreign Affairs Manual, reference to its provisions is informative when evaluating an applicant's conduct with regard to misrepresenting intent upon entry into the United States.

9 FAM 40.63 N4.2 states:

In determining whether a misrepresentation has been made, it is necessary to distinguish between misrepresentation of information and information that was merely concealed by the alien's silence. Silence or the failure to volunteer information does not in itself constitute a misrepresentation for the purposes of INA 212(a)(6)(C)(i).

The Department of State has developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." 9 FAM 40.63 N4.7-1(3).

In this case the record establishes that the applicant entered the United States on July 29, 2007, as a B-2 nonimmigrant visitor for pleasure. The applicant then married her spouse on August 4, 2007, seven days later.

If conduct occurs within 30 days of entry to the United States a presumption of misrepresentation arises. 9 FAM 40.63 N4.7-2. Further, the record indicates that the applicant was engaged to her current spouse as of May 2007. *Statement of the Applicant*, dated March 13, 2008. The applicant has not submitted any documentation to support any sudden change of circumstances arising after her entry. In light of the fact that she married her spouse seven days after her entry after having been engaged since May of that year it was reasonable for the Field Office Director to conclude that she misrepresented her intent when entering the United States. The applicant misrepresented her intent to immigrate to the United States and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 her 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 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.

The record contains, but is not limited to, the following evidence: statements from the applicant; statements from the applicant’s spouse; a statement from the applicant’s step-daughter; statements from friends and associates of the applicant; a copy of a birth certificate for the applicant’s daughter; a statement from [REDACTED] dated January 12, 2011; copy of a Cytogenetics Report for the applicant’s daughter, dated September 16, 2010; copy of a letter from the County of Chenango Department of Public Health, New York, dated January 13, 2011, regarding the applicant’s daughter; a statement from [REDACTED], NP, of the U.S. Department of Veteran’s Affairs, dated September 22, 2009; letter to the applicant’s spouse from U.S. Department of Veteran’s Affairs regarding disability status; statement from [REDACTED] dated September 24, 2009; copies of court records relating to the applicant’s 1991 conviction for mischief in Canada; and financial records and documents filed in relation to the applicant’s Form I-864.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The AAO will first examine hardship upon relocation. On appeal the applicant asserts that her spouse has several medical conditions relating to his military service to the United States for which his treatment is covered by the U.S. Department of Veteran’s affairs located in the United States. *Form I-290B*, received October 15, 2010; *Statement of the Applicant*, dated October 12, 2009. She explains that he has resided in the United States his entire life and that he lives near his parents who

rely on him physically for support. She further asserts that they recently purchased a home and would experience a significant financial impact if he were to relocate.

The applicant's spouse has submitted a statement asserting that he has several medical conditions which require frequent doctor's visits and monitoring, including joint problems, skin problems, diabetes and tinnitus, and he explains that if he relocated to Canada away from the Department of Veteran's Affairs he would be unable to afford his medical treatment or medications. He also explains that he is gainfully employed in the United States and has significant community ties among veterans' groups and family members who reside near him.

The record does not contain any medical documentation verifying the medical conditions of the applicant's spouse, however, it does contain statements from the Department of Veteran's Affairs verifying that he has been declared 70% disabled. In a statement dated September 22, 2009, [REDACTED] corroborates that the applicant's spouse has numerous chronic conditions and that it would be a hardship for him to relocate away from the Department of Veteran's Affairs which covers the cost of his medical treatment.

The AAO notes that the applicant's youngest child was born with Down's Syndrome and recognizes that disrupting her continuity of care with her current medical doctors familiar with her history and medical records could result in an emotional impact on the applicant's spouse. *Statement of [REDACTED]*, January 12, 2011.

The record contain a statement from the applicant's spouse's sister and brother, as well as a friends of the applicant's spouse, asserting that they share a relationship and that the applicant's spouse helps care for his parents. The applicant's spouse's father has submitted a letter stating that if the applicant's spouse, his son, relocated he would suffer hardship because his son helps him chop firewood during the winter and make repairs on his house.

There is also a letter in the record indicating that the applicant and her spouse purchased a residential property together. There is evidence in the record indicating that the applicant's spouse is employed.

There is sufficient evidence to establish that that the applicant's spouse has several medical conditions, that he has retirement and medical benefits in the form of medical coverage through the Department of Veteran's Affairs. There is also evidence of his significant community and family ties in the United States. When these hardship factors are considered in the aggregate, they are sufficient to establish that the applicant's spouse would experience extreme hardship upon relocation to Canada.

With regard to hardship upon separation, the applicant's spouse has recently submitted documentation indicating that his three month old daughter was born with Down's Syndrome. He explains that her condition requires a heightened standard of medical care, that the applicant is the primary caregiver for their daughter and that it would be an extreme hardship for him to care for his daughter and remain employed in the absence of the applicant. He further explains that this hardship

would be compounded by his own medical conditions which require frequent doctor's visits and monitoring.

The record also contains a statement from the applicant's father-in-law asserting that the applicant's spouse would not be able to support two households if the applicant were removed to Canada.

The record contains medical documentation confirming that the applicant's daughter was born with Down Syndrome. There is also documentation which explains the impacts of Down's Syndrome and what it means in terms of medical care for someone with the condition. Although the evidence of the applicant's spouse's medical conditions is not detailed, there are statements from the U.S. Department of Veteran's Affairs indicating that he is considered to have a 70% disability. These hardships alone constitute a significant and uncommon impact on the applicant's spouse if she were removed from the United States. It is reasonable to assume in these circumstances that the stress and anxiety of raising a child with these medical conditions would result in additional emotional impact if her primary caregiver were removed from the United States.

When these hardship factors are examined in the aggregate, given the need for heightened medical care for their young daughter and the medical conditions of the applicant's spouse, they indicate that the applicant's spouse would experience extreme hardship if the applicant were removed and he remains in the United States.

As the applicant has established that a qualifying relative will experience extreme hardship, the AAO may now move to consider whether she warrants a waiver 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).

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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then “balance 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 AAO finds that the unfavorable factor in this case is the applicant’s misrepresentation upon entering the United States. The favorable factors in this case include the presence of the applicant’s spouse, the presence of her U.S. citizen daughter, the hardship her spouse would experience upon her removal, the medical condition of her daughter, her lack of any criminal record while resident in the United States and the statements of moral character in the record. The favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director’s decision will be withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained.