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U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

H5

FILE: [REDACTED] Office: CHICAGO

Date: APR 13 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:

SELF-REPRESENTED

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,

A handwritten signature in cursive script that reads "Michael Humway".

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact to procure admission into the United States.¹ The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and daughter.

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

On appeal, former counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant is denied admission to the United States.

In support of the waiver application, the record includes, but is not limited to, a letter from the applicant's spouse, medical records, financial documentation, the applicant's spouse's naturalization certificate, the applicant's child's birth certificate, the applicant's marriage certificate, and a court disposition. The entire record was reviewed and considered in rendering a 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.

The record reveals that the applicant admitted in a sworn statement that he entered the United States from Mexico in September 1999 using another individual's permanent resident card. *Record of Sworn Statement*, dated March 17, 2008. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact to procure admission into the United States. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides, in pertinent part:

¹ The AAO notes that the applicant was convicted in the Circuit Court of Cook County, Illinois, on March 3, 1998 of Battery in violation of section 12-3 of Act 5 of Chapter 720 of the Illinois Compiled Statutes (720 ILCS 5/12-3) and sentenced to one year probation (case no. [REDACTED]). This offense is a Class A misdemeanor, punishable by a term of imprisonment less than one year. See 720 ILCS 5/5-8-3. Aliens who have been convicted of crimes involving moral turpitude are inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant is eligible for the "petty offense" exception to inadmissibility arising under section 212(a)(2)(A)(i)(I) of the Act, we need not address the issue of whether his offense is a crime involving moral turpitude. See Section 212(a)(2)(A)(ii)(II) of the Act.

- (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 his child 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.

On appeal, former counsel asserts that the applicant’s spouse’s parents, siblings, and child are permanent residents or U.S. citizens. Former counsel states that the applicant’s spouse has never been employed and depends on the applicant’s income for her financial support. Former counsel notes that the applicant’s spouse would be unable to pay her mortgage without the applicant’s support. Former counsel contends that the applicant’s spouse suffers from physical and mental illnesses. *Statement on Appeal Notice (Form I-290B)*, dated June 6, 2008.

The applicant’s spouse asserts that she was diagnosed with diaphragmatic hernia with antral gastritis and internal hemorrhoids. She states that her doctor has prescribed Prevacid and a change in her diet. She notes that her health condition is debilitating and prevents her from “carrying on normal everyday living.” She states that she has a history of panic attacks resulting from her “excessive nervousness and anxiety.” She notes that she is in constant fear of losing the applicant. She contends that she is unemployed, and depends on her husband’s health insurance. The applicant’s spouse states that her parents reside in a three bedroom house and would not be able to accommodate her.

She asserts that she is financially dependent on the applicant, and she has two mortgages on her home. *Affidavit of Monica Sanchez*, dated March 28, 2008.

Upon review of the record, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if he is removed to Mexico and his spouse remains in the United States.

The AAO acknowledges that the applicant and his spouse will experience emotional hardship if they are separated as a result of his inadmissibility. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, 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). As stated, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another. Although it is unclear whether the applicant’s spouse continues to suffer from panic attacks, the record reflects that she was previously admitted to a hospital emergency room for agoraphobia with panic and anxiety. *St. Francis Hospital & Health Center Discharge Instructions*, dated August 24, 2006. The applicant’s spouse has stated that she has a history of panic attacks resulting from her “excessive nervousness and anxiety.” She notes that she is in constant fear of losing the applicant. The AAO will therefore give considerable weight to the emotional hardships the applicant’s spouse would suffer upon separation from the applicant.

The AAO will also give weight to the financial hardships the applicant’s spouse claims she would suffer upon separation from the applicant. The record shows that the applicant’s spouse had her daughter when she was 18 years old and her Biographic Information Form (Form G-325) indicates that she has never been employed. The record shows that the applicant’s spouse is receiving medical treatment for a diaphragmatic hernia with antral gastritis and internal hemorrhoids. The applicant’s spouse has indicated that her health related expenses are paid with her husband’s group insurance. *See Affidavit of [REDACTED]* The record contains a copy of a BlueCross BlueShield health insurance card issued to the applicant through his employer. The AAO recognizes that the applicant’s spouse will have considerable difficulties as a single mother who has never been employed to find gainful employment to cover her household and medical expenses.

All elements of hardship to the applicant’s spouse should she be separated from the applicant have been considered in the aggregate. The AAO finds that the aggregate of the emotional and financial hardships demonstrated in the record rise to the level of extreme hardship.

Although the applicant has demonstrated extreme hardship to his spouse upon separation, he has not demonstrated that his spouse would suffer extreme hardship should she decide to relocate to her native country of Mexico to maintain family unity.

The applicant’s spouse asserts that in Mexico she will not have adequate access to health care because she will not have insurance or employment. She states that her parents and two sisters reside

in Illinois. She notes that only her grandparents reside in Michocacan, Mexico. She states that her grandparents depend on her parents for monthly financial support. She contends that she would have to financially rely on her parents to support her if she relocated to Mexico. The applicant's spouse states that it would be "unfair and devastating" if she were separated from her parents and sister who reside in the United States. *Affidavit of [REDACTED]*, dated March 28, 2008.

The record does not demonstrate that the applicant would be unable to find employment in Mexico to support his family. The applicant has not submitted country condition reports, or any other documentation, to demonstrate that an individual with his employment background and skills would be unable to find employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO cannot determine that the applicant's spouse would suffer financial hardships upon relocation to her native country of Mexico.

The applicant's spouse claims that she would suffer hardship from severing her family ties in the United States. The record reflects that the applicant's spouse's parents have filed an Affidavit of Support (Form I-864) on the applicant's behalf. The record shows that her parents reside in Illinois, and she is residing in a home owned by her father. *See Wachovia Loan Statement*. The AAO acknowledges that the applicant's spouse is close with her parents and would suffer emotionally from separation from them. However, as stated, 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. 12 I&N Dec. 810, 811-12 (BIA 1968). While the AAO gives weight to the hardships the applicant's spouse would suffer upon separation from her parents, the AAO finds that this factor alone does not rise to the level of extreme hardship. The applicant has not presented any other claims of hardship to his spouse upon relocation to Mexico.

In conclusion, although the applicant has demonstrated that his spouse would suffer extreme hardship upon separation from him, he has failed to demonstrate that his spouse would suffer extreme hardship if he chose to relocate to Mexico to maintain family unity. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.