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DATE: **MAY 24 2011** Office: TAMPA, FLORIDA FILE:

IN RE: Applicant:

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Brazil who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 6, 2009.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. In the alternative, counsel states that the applicant's qualifying relative would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; academic degrees for the applicant's spouse; a mortgage statement; a student loan statement; an employment letter for the applicant's spouse; a psychological evaluation for the applicant's spouse; statements from the applicant; country conditions reports; tax statements; a W-2 Form for the applicant's spouse; earnings statements for the applicant's spouse; bank statements; an airline ticket receipt; and a cable bill. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Prior to addressing whether the applicant qualifies for a waiver application, the AAO finds it necessary to address issues regarding inadmissibility. Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. The record reflects that on November 8, 2004 the applicant was admitted to the United States on a J-1 visa valid for duration of status. *Form DS-2019*. On November 27, 2006 the applicant submitted a signed Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant stating that she was a citizen of Bolivia and provided the address of a Baptist church for which she requested classification as a Special Immigrant Religious Worker. *Form I-360*. On August 13, 2007 the Form I-360 was denied due to abandonment. *Decision of the Director*, dated August 13, 2007. The applicant married a United States citizen and in connection with her Form I-130/Form I-485 applications, she stated that she is a citizen of Brazil, is not a citizen of any other country, has never been a citizen of any other country, and was working at Molly Maid while residing at the address she provided on her Form I-360 application. *Record of Sworn*

Statement, dated July 17, 2008. According to the applicant, she came to the United States on a J-1 visa for an au pair program. *Statement from the applicant*, dated February 3, 2009. She met a man named [REDACTED] who told her he could help her obtain a driver's license. *Id.* She states that she never sought or anticipated receiving any immigration benefit to which she was not entitled. *Id.* She states that she never signed nor filed a Form I-360, and that she assumes that [REDACTED] filed this form with her name on it, stating that she was born in Bolivia. *Id.* Counsel asserts that the applicant did not knowingly or willfully misrepresent a material fact for the purpose of obtaining an immigration benefit. *Form I-290B, Notice of Appeal or Motion; Attorney's brief.* While the AAO acknowledges the applicant and counsel's statements, it notes that it is the applicant's burden to establish that she is eligible for the benefit sought. There is no documentation included in the record, such as documentation of a complaint against [REDACTED] for the unauthorized practice of law, to support such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Further, the applicant states that she used the receipt indicating that an I-360 Petition had been filed on her behalf by a Baptist church, to obtain a driver's license, which undermines her claim that she was unaware of the contents of the fraudulent petition. As such, the AAO finds that the applicant is inadmissible under 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 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-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.

If the applicant's spouse joins the applicant in Brazil, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of France. *Naturalization certificate*. His parents reside in France. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse is an Area Manager for a company he has worked for since 2005 that is based in Florida. *Employment letter for the applicant's spouse*, dated January 26, 2009. The applicant's spouse doubts he would be able to pursue his career goals in Brazil and believes that if he had to start another job from the beginning, this would set back his career advancement. *Statement from the applicant's spouse*, dated February 3, 2009. The applicant's spouse notes that he has a mortgage and student loans to pay off and if he were to relocate to Brazil, he would suffer a substantial loss. *Id.*; *See mortgage and student loan statements*. A student loan statement included in the record shows that the applicant's spouse owes a total balance of \$19,750.43. *Student loan statement*. A mortgage statement dated January 2, 2009 showed a monthly payment of \$714.08 and a total balance owed of \$115,450.00. *Mortgage statement*. The parents of the applicant reside in Sao Paulo, Brazil. *Form G-325A, Biographic Information sheet, for the applicant*. Country conditions reports included in the record note that the criminal threat in Sao Paulo is rated "critical" by the U.S. Department of State and that crime is still oppressive and widespread despite a reported decrease. *Brazil 2008 Crime & Safety Report: Sao Paulo, Overseas Security Advisory Council*, dated February 22, 2008. When looking at the aforementioned factors, particularly the applicant's spouse's lack of familial and cultural ties to Brazil, his documented financial expenses in the United States, the difficulties he would have in seeking employment and adjusting to a foreign culture where he has no ties, the professional disruption a relocation would cause, as well as the documented crime in Brazil, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Brazil.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of France. *Naturalization certificate*. His parents reside in France. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse notes that it would be a huge emotional setback for him if he were separated from the applicant. *Statement from the applicant's spouse*, dated February 3, 2009. He further asserts that his marriage is very important for his overall well-being. *Id.* A psychological evaluation included in the record notes that the applicant's spouse's emotional instability has escalated since he learned of the uncertain future of the applicant's ability to remain in the United States. *Psychological evaluation from [REDACTED] Licensed Mental Health Counselor*, dated February 1, 2009. He has reported depression, anxiety, trouble with memory and sleep, headaches, feeling hopeless about the future and lonely, lack of interest in things, and easily annoyed to name a few of the symptoms. *Id.* The most disturbing symptoms are his thoughts of suicide. *Id.* He has been diagnosed with Major Depression, Recurrent as well as Anxiety State. *Id.* His licensed healthcare professional believes that the applicant's spouse would benefit from seeking ongoing mental health counseling to help him stabilize his emotions during this difficult time. *Id.* When looking at the aforementioned factors, particularly the lack of familial support in the United States as well as the psychological health conditions of the applicant's spouse as documented by a licensed healthcare professional, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of

equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's misrepresentation for which she now seeks a waiver. The favorable and mitigating factors are her United States citizen spouse, the extreme hardship to her spouse if she were refused admission, and her supportive relationship with her spouse as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.