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

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Date: Office: BALTIMORE, MARYLAND FILE: [REDACTED]  
MAY 27 2011

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Trinidad 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the daughter of United States citizens and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 parents.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 16, 2009.

On appeal, the applicant, through counsel, claims that United States Citizenship and Immigration Services' (USCIS) decision "was erroneous," "arbitrary and capricious." *Form I-290B*, filed July 16, 2009. Additionally, counsel claims that the "applicant demonstrated extreme hardship in that his [sic] hardship was more than the mere hardship caused by family separation. Applicant not only has the age and length of residence in the United States but demonstrated family ties, financial and emotional burden to his [sic] United States citizen parents and siblings." *Id.* Further, counsel asserts that USCIS "failed to consider all the evidence, such as actual and prospective injury to [the applicant's] mother whose conditions will worsen under undue stress."

The record includes, but is not limited to, counsel's appeal brief, a letter from the applicant, a statement from the applicant's mother, a letter of support, medical documents for the applicant's parents, a bank statement, tax documents, and pay stubs and employment verification for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, the record indicates that the applicant admitted that a fraudulent Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) was filed on her behalf. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives 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 (Board) 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 a qualifying relative, 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 first prong of the analysis addresses hardship to the applicant’s parents if they relocate to Trinidad. The applicant has not asserted that her parents will endure hardship should they relocate to Trinidad. In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges her parents will face outside the United States. The applicant bears the burden to show extreme hardship to her qualifying relatives in these proceedings. See section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that the record establishes that the applicant’s mother is suffering from coronary artery disease, diabetes, hypertension, and osteoarthritis of her neck and knee; she takes various medications; and sees a doctor monthly. Additionally, the record establishes that the applicant’s father has diabetes and high cholesterol,

and takes medications to control his medical conditions. However, the AAO notes that there is no documentation in the record establishing that the applicant's parents cannot receive treatment for their medical conditions in Trinidad or that they have to remain in the United States to continue their treatments. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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)). In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's parents would experience if they joined the applicant in Trinidad, the AAO does not find the applicant to have established that her parents would suffer extreme hardship upon relocation.

In addition, the record also fails to establish extreme hardship to the applicant's parents if they remain in the United States. In a letter dated April 15, 2009, counsel claims that "the applicant's presence in the United States is essential to her parents' daily activities, physical and mental well being and a [sic] mere existence." In counsel's appeal brief dated August 20, 2009, counsel states that the "applicant resides with her United States citizen parents and plays an integral role in assisting her parents, primarily her mother." On appeal, counsel states the applicant's mother "is suffering from numerous cardiovascular diseases, osteoarthritis of the knee and neck, and hyperlipidemia," and is under constant doctor's care. As noted above, the record establishes that the applicant's mother is suffering from coronary artery disease, diabetes, hypertension, and osteoarthritis of her neck and knee, and takes various medications. Counsel claims that the applicant's mother "depends on the applicant to go with her to the doctor." In a statement dated August 10, 2009, Dr. [REDACTED] indicates that the applicant's mother sees a physician on a monthly basis and the applicant "helps to bring her for doctor visits." As noted above, in a letter dated April 9, 2009, Dr. [REDACTED] states the applicant's father has diabetes and high cholesterol, and takes medications to control his medical conditions. Counsel states the applicant's "parents' conditions will deteriorate rapidly because of the stress" of the applicant departing the United States. The AAO notes the medical conditions of the applicant's parents.

Counsel claims that the applicant's "mother is unable to do many things for herself," the applicant is her caregiver, and provides her with emotional support. In a statement dated August 5, 2009, the applicant's mother claims that the applicant helps her "pay some of [their] household bills, cooks healthy meals for [her], cleans the home, and helps [her] keep up with regular exercises." She states the applicant is her "only daughter who has been supportive" of her. She also states that without the applicant's "help emotionally, physically and financially," she "will suffer immensely." Counsel states the applicant's mother depends on the applicant emotionally, "especially on days that she is suffering from her osteoarthritis, which is very debilitating." The AAO notes the applicant's mother's concerns.

Counsel claims that the "applicant's mother has been unable to work since 2002, when she underwent CA-GG heart bypass surgery." In a letter dated April 9, 2009, Dr. [REDACTED] states the applicant's mother underwent CA-BG in 2002. Counsel states the applicant "contributes her income to the household." The applicant's mother states "[w]ith the loss of [her] wages, [the applicant] and her father have maintained [their] home." Counsel claims that the applicant's mother depends on the applicant's "income to supplement her portion of the household expense[s] and pay for her medicine." She claims that the

applicant's father will be unable to "pay for his wife's increasing medical needs." Counsel also claims that if the applicant returns to Trinidad, her "father will have to reduce his hours to take care of his wife or obtain a daily caregiver to tend to his wife's need[s] or worse yet, place her in an assisted living home. Either option will cause financial and emotional strain on him." Counsel states the applicant's "contribution allows [her] parents to meet their financial obligations without having to become public charges." The AAO notes the financial concerns of the applicant's parents.

The AAO notes that the applicant's parents may suffer some emotional hardship in being separated from the applicant. However, the AAO notes that the record does not establish that their emotional hardships go beyond the typical effects of separation. The AAO notes that the applicant's mother may suffer some hardship in not having the applicant's assistance; however, counsel indicates that the applicant has siblings that reside in the area and there is nothing in the record establishing that her siblings cannot assist their mother with taking care of the household and/or taking her to her monthly doctor's appointments. Additionally, the AAO notes that in the applicant testified that she resides with her parents, three sisters, and a nephew. *See record of sworn statement*, dated March 27, 2007. Further, the AAO notes that the applicant's parents may experience some financial hardship in being separated from the applicant; however, the applicant has not provided sufficient documentation to establish her parent's complete financial obligations or economic situation. The record establishes that the applicant is employed but it is not clear how much financial support she provides her parents, nor has it been established that her parents cannot meet their expenses without her support. The AAO also notes that the applicant has submitted no documentary evidence that demonstrates that she would be unable to obtain employment in Trinidad and, thereby, reduce the financial burden on her parents. Based on the record before it, the AAO finds that the applicant has failed to establish that her parents will suffer extreme hardship if her waiver application is denied and they remain in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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 proving eligibility 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.