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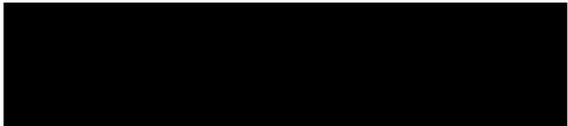
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

115



DATE:

NOV 22 2011

Office: BALTIMORE, MD

FILE:



IN RE:

Applicant:



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.

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 black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter 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 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 obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated May 1, 2009.

On appeal, counsel asserts that the removal of the applicant from the United States would result in extreme hardship to her spouse. *Form I-290B, Notice of Appeal or Motion*, dated May 25, 2009; *see also counsel's brief in support of the appeal*.

The record includes, but is not limited to, briefs from counsel; tax returns, earnings statements and W-2 Wage and Tax Statements, for the applicant and her spouse; letters of employment for the applicant and her spouse; a psychological evaluation of the applicant's spouse; a medical statement and records relating to the applicant's younger son; a list of the family's expenses; and copies of recent bills. The entire record was reviewed and all relevant evidence considered in reaching 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 reflects that the applicant last entered the United States on May 25, 2002, as a B-1/B-2 visitor with authorization to remain until July 15, 2002. On September 6, 2002, the applicant submitted a Form I-821, Application for Temporary Protected States (TPS), indicating that she had entered the United States on November 14, 2000. To qualify for TPS as a Salvadoran, the applicant, amongst other requirements, had to have resided continuously in the United States from February 13, 2001. The applicant's misrepresentation regarding the date of her arrival allowed her to qualify for TPS, which was granted on July 21, 2003, thereby procuring an immigration benefit through fraud or the willful misrepresentation of a material fact. In that the applicant procured an immigration benefit under the Act through fraud or 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 the inadmissibility.

Section 212(i) of the Act provides that:

- (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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

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.

Counsel asserts that removal of the applicant would cause emotional and financial hardship to her U.S. citizen spouse. Counsel states that the applicant and her spouse own a home and that the applicant’s spouse depends on the applicant’s income to meet their financial obligations including, paying the mortgage. Counsel indicates that the applicant takes care of the family home and the children and that if she is removed from the United States, her spouse would be forced to raise their children as a single parent, juggling the children’s school, medical appointments, childcare, food preparation and household maintenance, as well as the other elements of parenting. He contends that the applicant’s spouse would have to work fewer hours so that that he could care for his children, thereby reducing his income. Counsel also asserts that one of the applicant’s children was diagnosed with an episode of Cerebellar Ataxia in September 2008, and that this medical problem would place physical pressure on the applicant’s spouse alone should it worsen. Counsel further states that the applicant provides emotional support to her family, that the applicant and her spouse are emotionally committed to their marriage and that separation from the applicant would be emotionally devastating for the applicant’s spouse.

In support of the emotional hardship claim, the record contains an April 8, 2008 psychological evaluation of the applicant’s spouse prepared by [REDACTED] a Licensed Psychologist. [REDACTED] reports that after a three-hour interview of the applicant’s spouse and the administration of several standardized psychological testing instruments, he found that the applicant’s spouse does not suffer from any diagnosable psychiatric condition. [REDACTED] indicates that if the applicant is removed from the United

States, her spouse would be faced with the prospect of being a single parent, and that research into single parenting suggests that children are better off in two-parent families. He states that research shows that children who are separated from a parent when they are between three and six years-of-age tend to be less self-confident, less sociable and less responsive with others. He also indicates that single parents have a higher incidence of depression, and that although the applicant's spouse has not shown a prior tendency to depression, the statistical likelihood of him becoming depressed would increase if he is separated from the applicant. [REDACTED] does not recommend psychotherapy for the applicant's spouse because he states that the applicant's spouse has no diagnosable psychiatric disorder. He indicates however, that if the applicant is removed from the United States, psychotherapy might become necessary for her spouse.

The AAO notes that [REDACTED] interview and testing of the applicant's spouse found that while he may be experiencing some stress in his life, he is not stressed to the point where "prominent symptoms are observed." [REDACTED] also pointed out that although the applicant's spouse may feel unhappy at times, his self-esteem is intact and that stress is having little impact on his ability to function. [REDACTED] observations as to what might happen to the applicant's spouse's emotional state if the applicant is removed are not probative here. Therefore, the evaluation does not establish what impact the applicant's removal would have on her spouse's mental or emotional health.

In support of the financial hardship claim, the record contains letters of employment from the applicant and her spouse; tax returns, earnings statements and W-2 Wage and Tax Statements for the applicant and her spouse; and documentation relating to the family's expenses. The AAO notes that the employment letter from the applicant's spouse's employer indicates his salary for 2008 to be about \$56,000, an amount that far exceeds the federal poverty rate for a family of four in 2008. We also note that not all the listed family expenses appear to be recurring costs, e.g., doctor, dentist and car repair bills, which the applicant's spouse would be required to pay each month. Although the loss of the applicant's income would result in some level of economic hardship to her spouse, the record contains insufficient evidence to allow us to determine the extent of that hardship.

A statement from [REDACTED], the applicant's younger son's pediatrician, dated December 8, 2008, states that the applicant's younger son is a patient at Kaiser Prince George's Medical Center, that he had an episode of Cerebellar Ataxia on September 10, 2008, which caused him to have difficulty walking, speaking, and loss of muscle tone. [REDACTED] states that he recovered from the episode but that he is being seen by a Neurologist to evaluate the etiology of the episode. The AAO notes the statement from [REDACTED] and the medical records relating to the applicant's younger son's medical condition is too preliminary to allow us to find that he has health problems that would affect his father in the applicant's absence.

Thus, based on our review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and he continues to reside in the United States without the applicant.

On appeal, counsel asserts that the applicant's spouse would experience hardship if he relocated to El Salvador to live with the applicant. Counsel states that the applicant's spouse has been residing in the United States since 1999 and that he is fully immersed in the American life. In a brief submitted with the Form I-601, counsel states that country conditions in El Salvador are deplorable, that there are no sources of employment, that salaries are too low, and that the applicant and her spouse would be unable to earn enough income in El Salvador to meet their financial obligations and maintain their current standard of living. Counsel indicates that the applicant and her spouse do not have any home in El Salvador and that they could not depend on the applicant's family for accommodation.

While the AAO acknowledges counsel's claims on the impact of relocation on the applicant's spouse, we note that the record does not contain country conditions information on El Salvador to support these claims. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We do note, however, that El Salvador is currently designated for Temporary Protected Status (TPS) and that its TPS designation has been extended by the Secretary of Homeland Security through March 9, 2012, based on her finding that the living conditions resulting from a series of severe earthquakes, which prompted the initial TPS designation of El Salvador in 2001, persist and temporarily prevent El Salvador from adequately handling the return of its nationals. The AAO also notes the presence of other factors, such as the applicant's spouse's long-term residence in the United States, his long-term employment with benefits, which he will forfeit if he relocated to El Salvador, and the presence of family and community ties in the United States. When these factors are examined in the aggregate, the AAO finds the record to establish that the applicant's spouse would experience extreme hardship upon relocation.

Although the applicant has demonstrated that her spouse would experience extreme hardship if he relocated to El Salvador, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship as a result of separation, we cannot find that refusal of admission would result in extreme hardship to her spouse in this case.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found her statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for a 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.