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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

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[REDACTED]

Date: **MAR 29 2012**

Office: MIAMI, FL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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 Field Office Director, Miami, Florida. 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 Nicaragua who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated June 25, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering her husband's medical problems, the fact that he has worked for the same employer for the past twenty years, and country conditions in Nicaragua.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on October 22, 2007; an affidavit from ; a letter from s physician and copies of medical records; a letter from a psychiatrist; an article addressing economic crisis; a letter from s employer; copies of tax returns, pay stubs, and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and counsel concedes, that in January 1999, when the applicant was seventeen years old, she entered the United States using a tourist visa she obtained by presenting a fraudulent birth certificate. In addition, as counsel concedes, the applicant misrepresented that she entered the United States without inspection when she registered for Temporary Protected Status. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED] states that he has lived in the United States since 1988 when he was fourteen years old. He states he was raised by his uncles in the United States and that even though his parents still reside in Nicaragua, he does not have a close relationship with them. [REDACTED] contends he has had the same job for the past twenty years and that his wife cares for their daughter while he works. He states that his wife works in the evenings and on weekends, and that he takes care of their daughter while his wife is working. In addition, [REDACTED] states he was hospitalized in February 2008 and diagnosed with Arrhythmia for which he takes medication.

After a careful review of the record, the AAO finds that if [REDACTED] moved back to Nicaragua, where he was born, to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] has had several visits to the emergency room for chest pains, shortness of breath, and left arm paresthesia. According to a letter from a psychiatrist in the record, [REDACTED] likely has Affective Disorder with combined Depression, Anxiety, and Panic Attacks. The letter states that [REDACTED] is in psychiatric treatment, including psychotherapy and psychotropic medications. Copies of [REDACTED]'s medical records indicate he underwent an EKG and echocardiogram, the results of which were abnormal. The AAO acknowledges counsel's contention that [REDACTED] would not receive adequate treatment in Nicaragua and takes administrative notice that the U.S. Department of State describes medical care as being very limited in Nicaragua. *U.S. Department of State, Country Specific Information, Nicaragua*, dated January 30, 2012. Moreover, the AAO recognizes that [REDACTED] has lived in the United States for twenty-four years, including his entire adult life. In addition, a letter from his employer corroborates his claim that he has worked for the same employer for the past twenty-two years. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he moved back to Nicaragua is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Regarding the emotional hardship claim, although the record contains a letter from a psychiatrist, the letter is based on a single evaluation and makes clear that it is a "provisional report." Although the letter states that [REDACTED] is in psychiatric treatment, the psychiatrist's statements appear tentative,

“pending the follow-up appointment” and “pending further medical records.” Although the psychiatrist contends he will submit a full report and opinion, there is no additional report in the record. The fact that the report was based on a single interview and makes clear its recommendations are pending additional appointments and a review of medical records diminishes the report’s value to a determination of extreme hardship. Regarding [REDACTED] visits to the emergency room and abnormal EKG and echocardiogram, there is no evidence in the record he requires the assistance of his wife. To the extent [REDACTED] contends his wife cares for their daughter while he works, although the record contains copies of tax documents, there is no evidence of the couple’s regular, monthly expenses, such as rent or mortgage. Although the AAO does not doubt that [REDACTED] will suffer from some financial hardship, without more detailed information addressing the couple’s total monthly expenses, there is insufficient evidence in the record to determine the extent of his financial hardship. Although the AAO is sympathetic to the family’s circumstances, the record does not show that the applicant’s situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). In sum, even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that [REDACTED] would suffer extreme hardship if he decided to remain in the United States without his wife.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 from separation, we cannot find that refusal of admission would result in extreme hardship to [REDACTED] the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s husband 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, 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.