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

U.S. Citizenship
and Immigration
Services

DATE: **OCT 01 2014** OFFICE: LOS ANGELES

File: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Republic of China (Taiwan) who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure from the United States. The record also reflects the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States through willful misrepresentation. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), to reside with her U.S. citizen spouse and child in the United States.

The Field Office Director indicated that the applicant did not submit documentary evidence from her qualifying relative with her waiver application and concluded she failed to establish extreme hardship to a qualifying relative. The Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated February 20, 2014.

On appeal, counsel asserts that the denial of the applicant's waiver application by U.S. Citizenship and Immigration Services (USCIS) was arbitrary and capricious, as: USCIS should have issued a request for evidence for the applicant to cure any evidentiary deficiency; and documentary evidence submitted with the waiver application was sufficient to corroborate the applicant's claims that her qualifying relative would experience extreme hardship if her waiver application were denied. *See Form I-290B, Notice of Appeal or Motion*, dated March 20, 2014.

The record includes, but is not limited to: briefs; correspondence; affidavits by the applicant's spouse and child; letters of support; documents concerning identity and relationships; academic, employment, financial, and medical documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(9) of the Act provides, in relevant part:

(B) Aliens unlawfully present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General [now Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record indicates that U.S. immigration officials initially admitted the applicant to the United States as an F-1 nonimmigrant student for the duration of her status around November 1991, with authorization to study at the [REDACTED] Oklahoma. The applicant indicates she did not complete her course of study because she married her previous spouse on October [REDACTED]. The applicant also indicates she and her previous spouse then relocated to California because of his employment with a company that petitioned for his nonimmigrant visa, and as a result she also received a nonimmigrant visa as his spouse. The record reflects the applicant and her previous spouse moved to California around May 1995, where she remained until her departure to Mexico on February 7, 2010.

The record does not reflect that the applicant was accorded any other nonimmigrant status after her admission as a nonimmigrant student in 1991. Moreover, the Field Office Director does not specify the period during which the applicant accrued unlawful presence. Under current Service policy, unlawful presence is counted as follows for nonimmigrants:

(A) Nonimmigrants Admitted until a Specific Date. Nonimmigrants admitted until a specific date begin accruing unlawful presence on the date the authorized period of admission expires, as noted on Form I-94, Arrival/Departure Card.

(B) Nonimmigrants Admitted Duration of Status (D/S). Nonimmigrants admitted to the United States for D/S begin accruing unlawful presence on the date USCIS finds a status violation while adjudicating a request for another immigration benefit, or on the date an immigration judge finds a status violation in the course of proceedings....

See Memorandum from Donald Neufeld, Act. Assoc. Dir., Domestic Operations, Lori Scialabba, Assoc. Dir., Refugee, Asylum and International Operations, Pearl Chang, Acting Chief, Office of Policy and Strategy, U.S. Citizenship and Immigration Service, to Field Leadership, "Consolidation of Guidance

Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,” dated May 6, 2009. The record does not show that a status violation was determined prior to the applicant’s departure from the United States. She was put into expedited-removal proceedings upon her return from Mexico in February 2010. At this point an immigration official found the applicant inadmissible for making a material misrepresentation for an immigration benefit, and for being an intending immigrant without proper documents. The record does not show that an immigration judge or official found the applicant violated her nonimmigrant student status. Moreover, the applicant has not been removed or departed since then, as required to trigger her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant, therefore, has not accrued unlawful presence and is not inadmissible under section 212(a)(9)(B)(v) of the Act.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(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(i) of the Act provides, in relevant part:

- (1) The [Secretary] may, in the discretion of the [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 [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.

The record reflects the applicant presented her California driver license and social security card to U.S. immigration officials at the [redacted] of Entry on February 7, 2010, and verbally indicated she was a lawful permanent resident in order to gain admission to the United States from Mexico. The record also reflects immigration officials placed her in expedited-removal proceedings pursuant to section 235(b)(1) of the Act and released her under an order of supervision on March 11, 2010, with the condition that she appear at Los Angeles International Airport on April 5, 2010 for removal to Taiwan. The record further reflects the applicant did not appear and was not removed; she is in the United States. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act. The applicant does not contest this finding of inadmissibility.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and other relatives is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. INS*, 138 F.3d 1292, 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.

Counsel asserts that the existence of family ties in the United States is the most important factor in determining hardship. *See Brief in Support of Appeal* (citing *United States v. Arrieta*, 224 F.3d 1076 (9th Cir. 2000); *Gutierrez-Centeno v. INS*, 99 F.3d 1529, 1533 (9th Cir. 1996); *Contreras-Buenfil v. INS*, 712 F.2d at 403). We acknowledge the observations of the Ninth Circuit and add that in *Salcido-Salcido*, *supra*, the Ninth Circuit held, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[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.) The present case arises within the jurisdiction of the Ninth Circuit, and due consideration is given to family separation in the present matter.

In her brief submitted in support of the applicant’s appeal, counsel contends: it is unreasonable that the applicant’s spouse must “choose between uprooting himself” from the applicant and separating from his other family members, because this choice does not comport with “family preservation”; the applicant’s spouse’s health is of “critical concern,” causing him to live “a very structured, orderly life since any major changes [create] emotional instability and . . . panic attacks”; he is “very dependent” on the applicant, who helps him to cope with his panic disorder; and “their partnership has allowed [him] not to shy away from society.”

The applicant’s spouse indicates: he would be devastated and suffer from “many additional panic attacks” if the applicant were not permitted to remain in the United States; he can be himself around her, because she understands him and has “brought out the best” in him; and he is unable to drive on the freeway or for long periods of time, and he also fears flying because of his panic disorder. The applicant submits a letter dated March 26, 2014, from her spouse’s physician, who indicates the spouse is routinely treated for diabetes, high blood pressure, allergic rhinitis, hypertension, hypercholesterolemia, and panic disorder, and that he is “compliant with his medication therapy.” Another medical letter, dated October 19, 2010, indicates the applicant’s spouse’s hyperlipidemia and anxiety and panic disorder are “well controlled” through his medications.

The applicant’s spouse also indicates he would experience financial hardship if the applicant’s waiver is not approved, because he cannot afford to maintain two separate households in California and Taiwan. To corroborate his statement, the applicant submits a letter of employment and earnings statements for her spouse, showing he has worked full-time for the Community Development

Commission of the County of [REDACTED] since March 1987, and he currently serves as the Director of the Financial Management Division, earning \$59.37 per hour. The record also includes a tax return for 2013, showing the applicant's family's adjusted gross income was \$144,676; bills and bank account statements; and a self-reported expense sheet, listing expenses amounting to \$3690 and income of \$6000 each month.

Although the record contains evidence of some of the applicant's spouse's financial obligations, it does not demonstrate his inability, as the family's primary breadwinner, to meet those obligations in the applicant's absence. The record also lacks evidence of expenses that the applicant would incur in Taiwan. Moreover, the applicant submits no evidence of labor or employment conditions in Taiwan to address her own ability to assist her spouse in maintaining their households.

Counsel contends USCIS should consider in its hardship analysis that the applicant has lived continuously in the United States for 23 years, and her U.S. citizen daughter currently is pursuing post-graduate studies. In support of these contentions, the record includes a statement the applicant's daughter submitted when the applicant was detained in 2010, in which she states it would be inhumane to separate her from the applicant, as she has already grown up without the love of her father. The applicant and her U.S. citizen daughter, however, are not qualifying relatives under the waiver provisions of 212(a)(9)(B)(v) and 212(i) of the Act, and the record does not sufficiently show the effect that their hardship would have on the applicant's only qualifying relative, her U.S. citizen spouse.

Counsel further contends: the applicant's mother-in-law is 86 years old and her medical conditions "require constant monitoring" and assistance with her daily activities; she takes several medications; the applicant assists her spouse with the care of his mother, for whom he provides lodging, food and spending money; and separation from the applicant would be a "tremendous loss" to her spouse's family. The applicant's spouse indicates he is his mother's only family member in California, and the applicant takes care of her while he is at work. A doctor treating the applicant's mother-in-law, in a letter dated March 19, 2014, specifies that she is being treated for hypertension, insomnia, osteoarthritis, back pain, vertigo, and hyperlipidemia.

The record is unclear about whether the applicant's mother-in-law resides with the applicant, her spouse, and her child and about the specific support the spouse provides to his mother. The spouse's affidavit of support dated December 12, 2012, indicates only three members in the spouse's household. The applicant's spouse, moreover, identifies his mother as a dependent on his 2009 federal tax return, filed approximately two years before the applicant's appeal. Where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Though the record is sufficient to establish the applicant's spouse and other relatives may experience a degree of hardship in her absence, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant's spouse would endure hardship upon relocation to be with the applicant as: he has lived in the United States for almost 40 years; he only has a few ties to Taiwan; he

has a stable job with the County of [REDACTED], where he has worked for over 28 years; his U.S. citizen adult children are still financially dependent on him; he would not earn the same income in Taiwan because of his age and lack of work experience there, and he therefore would be unable to assist his family members with their expenses; and it would be very difficult for him to relocate his mother because changing her doctors, treatment, and lifestyle would be “too drastic” and “cause more harm than good.” The applicant’s spouse states: he cannot imagine himself living anywhere other than the United States; he is happy with his relationships with his children, who are still very dependent on him, and with his grand-daughters; he plans to financially help one son as he pursues his medical studies; and he has paid about \$25,000 for another son’s school expenses.

As mentioned previously, the record does not include evidence to corroborate assertions concerning labor and employment conditions in Taiwan. However, the evidence reflects the applicant’s spouse has resided in the United States for over 30 years, where he maintains steady employment, family and community ties, and relies on healthcare for his medical conditions. The record reflects that the cumulative effect of the hardship the applicant’s spouse would experience due to the applicant’s inadmissibility rises to the level of extreme. We thus conclude that were the applicant’s spouse to relocate to Taiwan to be with the applicant due to her inadmissibility, he would suffer extreme hardship.

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. at 886. 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. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.