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

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: MEXICO CITY, MEXICO Date: MAR 3 1 2011

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRSENTED

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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Mexico 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 having sought a benefit under the Act through fraud or willful misrepresentation and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of her last departure. The applicant is the spouse of a lawful permanent resident. She is seeking a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§1182(i) and 1182(a)(9)(B)(v), in order to reside in the United States.

The Acting District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Acting District Director's Decision,* dated June 9, 2008.

On appeal, the applicant's spouse states that the applicant did not reenter the United States without inspection and submits evidence of her residence in Mexico since 1997. *Form I-290B, Notice of Appeal or Motion*, dated July 11, 2008; *Spouse's letter*, dated July 29, 2008, and *attachments*.

The record of proceeding includes, but is not limited to, the following evidence: letters from the applicant's spouse;[1] a letter from the doctor who has treated the applicant since 1999; a baptismal record showing that the applicant and her spouse served as godparents at a 1998 baptism in Mexico; a statement from the applicant's Mexican employer; and documentation relating to the applicant's 1997 attempt to enter the United States. The entire record was reviewed and all relevant evidence considered in reaching this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

The record reflects that, on August 12, 1997, the applicant attempted to enter the United States with a fraudulent visa in her passport and was expeditiously removed under section 235(b)(1) of the Act on August 13, 1997. In that the applicant sought admission to the United States with a fraudulent

[1] One of the applicant's spouse's letters is written in Spanish and is not accompanied by a certified English-language translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO will not consider it in reaching a decision on the applicant's waiver request.

visa, she is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a section 212(i) waiver.

The AAO does not, however, find the record to establish that the applicant is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.

The Acting District Director concluded that the periods of residence reported on the applicant's Form G-325As, Biographic Informations, and her filing of the Form I-485, Application to Register Permanent Residence or Adjust Status, on March 30, 1999 demonstrated that she had returned unlawfully to the United States after her 1997 removal. The Acting District Director further found that because the applicant had reentered the United States without inspection, she had accrued more than one year of unlawful presence and was also inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The AAO notes the differing dates provided by the Form G-325As and that applicant's Form I-485 was filed in the United States in 1999, but also observes that the applicant's spouse, in a July 29, 2008 letter, contends that he completed the forms referenced by the Acting District Director and did not understand what he was doing. We further find the record to include the District Director's (Atlanta, Georgia) November 19, 2004 denial of the applicant's Form I-485, which indicates that she denied the adjustment application based on her finding that the applicant had abandoned the Form I-485 by returning to Mexico. In her decision, the District Director referenced a January 9, 2003 letter written by the applicant's spouse that reported the applicant had been unable to attend her fingerprint and interview appointments because she was in Mexico. The record also contains a July 18, 2008 statement from the applicant's Mexican employer who indicates that she has worked for him since 1997 without problems, a July 16, 2008 statement from Mexican physician [redacted] who asserts that the applicant and her spouse began fertility treatments with him in 1999 and a baptismal certificate that shows the applicant and her spouse were godparents at a baptism that took place in Mexico in 1998. A January 29, 2007 consular memorandum and worksheet from the American consulate in Ciudad Juarez, Mexico documents the applicant's visa interview on January 19, 2007. The only inadmissibility identified by the Department of State consular officer who

interviewed the applicant under oath is that relating to her attempt to enter the United States with a fraudulent U.S. visa in 1997.

Based on our review of the record, the AAO does not find the conflicting periods of residency stated on the Form G-325As and the 1999 filing of the Form I-485 to be sufficient proof that the applicant returned to the United States without inspection after her 1997 removal.[2] While the record does not definitively establish that the applicant has remained in Mexico since her August 1997 removal, we, nevertheless, find that the statement provided by the applicant's employer regarding her employment since 1997, combined with the consular memorandum's identification of a single 212(a)(6)(C)(i) inadmissibility following a face-to-face interview with the applicant, establishes by a preponderance of evidence that the applicant has not unlawfully reentered the United States since her 1997 removal. Accordingly, the AAO finds the record to demonstrate only that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought admission to the United States through fraud or the willful misrepresentation of a material fact.

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.

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 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,* 21 I&N Dec. 296, 301 (BIA 1996).

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[2] Based on her finding that the applicant had reentered the United States without inspection as early as her filing of the Form I-485 in 1999, the Acting District Director also determined that the applicant was inadmissible pursuant to sections 212(a)(9)(A) and 212(a)(9)(C) of the Act. As the record does not establish the applicant's unlawful reentry, the applicant is not subject to the bar imposed by section 212(a)(9)(A)(i) of the Act as more than five years have passed since she was expeditiously removed. Neither is she inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act for having reentered the United States without admission after having been ordered removed.

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 (BIA) 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 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 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 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.*

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 BIA 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.

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.

A review of the record does not find the applicant to claim that her spouse would experience any hardship as a result of her inadmissibility under section 212(a)(6)(C)(C)(i) of the Act. Neither does the record contain documentary evidence of any hardship that would result if the applicant's waiver request is denied. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's spouse would encounter if he relocates to Mexico to be with the applicant or remains in the United States without her. Accordingly, the applicant has failed to establish eligibility for a waiver under section 212(i) of the Act.

The applicant has failed to establish extreme hardship to a qualifying relative under section 212(i) of the Act. 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 will be dismissed.