

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2



FILE:

Office: PHILADELPHIA, PA

Date: NOV 14 2008

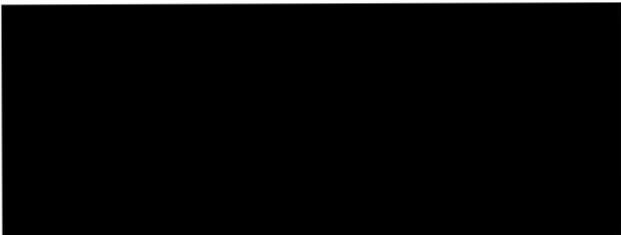
IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant, [REDACTED], is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative and failed to establish a favorable grant of discretion. *Decision of the District Director, dated December 12, 2005.* The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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 on August 30, 1986, [REDACTED] was charged with, and placed on unsupervised probation for, using a false visa to gain admission into the United States and entering without inspection. Mr. [REDACTED] stated that when he used the visa he did not realize it was fraudulent as a family member paid for the visa and sent it to him. Although [REDACTED] claims that he did not know that the visa was fraudulent, the record demonstrates that he was found guilty of the charge. The district director was therefore correct in finding [REDACTED] inadmissible under section 212(a)(6)(C) of the Act for attempting to use a false visa to gain admission into the United States.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to [REDACTED] and to his children will be considered only to the extent that it results in hardship to a

qualifying relative, who in this case is [REDACTED] U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

Extreme hardship to the applicant’s spouse must be established in the event that she remains in the United States without the applicant, and alternatively, that she joins the applicant to live in the Dominican Republic. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

To establish extreme hardship, the record contains, among other documents, a psychological hardship evaluation, birth certificates, divorce judgments, letters, photographs, invoices, a marriage certificate, a residential lease, school records, income tax records, and wage statements.

The psychological hardship evaluation of [REDACTED]s, the applicant’s spouse, by [REDACTED] a psychologist, conveyed, in part, that [REDACTED] 17-year-old son, [REDACTED], has lifelong cognitive and behavioral difficulties and has been diagnosed with Attention Deficit/Hyperactivity Disorder and was prescribed Ritalin for the condition. Mr. [REDACTED] states that Ms. [REDACTED] described [REDACTED] as functioning “like a 12 year old,” and that although he can become violent, they know how to control him. Mr. [REDACTED] stated that Ms. [REDACTED] indicated that [REDACTED] is currently attending a residential school in Pittsburgh and was court-ordered to remain there for one month because of addiction to marijuana and PCP, and that Ms. [REDACTED] son’s recent court hearing necessitated significant leave from work, and caused her a lot of stress. Mr. [REDACTED] stated that Mr. [REDACTED]s departure would have a great impact on his children as well as other family members. He stated that their combined income has allowed [REDACTED] to care for her three children, her mother who receives SSI because of arthritis, and her disabled stepfather. He indicated that, although he did not observe the children

interacting with [REDACTED] and was therefore not able to independently confirm it, [REDACTED] three children reportedly looked to [REDACTED] as a father figure as their own fathers have abandoned them. [REDACTED] stated that [REDACTED] son is in need of supervision because of his drug addiction and antisocial behavior, and that if he accompanies his mother to the Dominican Republic he is unlikely to receive the same intensive treatment available to him in the United States and the move to a different country would be stressful and could exacerbate his symptoms and acting-out behavior. Mr. [REDACTED] indicated that if [REDACTED] accompanies her husband to the Dominican Republic, she would have to give up her job and could no longer support her mother and stepfather. Mr. [REDACTED] conveyed that [REDACTED] works generally at night at the Marriott Hotel as a supervisor in housekeeping, earning \$40,000 annually. He stated that she is quite stressful because she earns the majority of the family's income, as her husband is unemployed. Mr. [REDACTED] described the situation of Mr.

children, stating that they would be negatively impacted if their father were to return to the Dominican Republic. Mr. [REDACTED] indicated that the applicant's daughter, [REDACTED] was hospitalized for one week in 2002 for clinical depression and was treated with antidepressant medication. He stated that [REDACTED] has a close relationship with her step-children and that her husband's 23-year-old daughter is the mother of a 3-year-old son and a nine-month-old daughter. He indicated that one of the applicant's daughters would have a difficult time supporting herself and attending college in the United States if the applicant returned to the Dominican Republic, and that given her history of clinical depression and psychiatric hospitalization, there is some risk of precipitating another episode of depression. Mr. [REDACTED] stated that Mr. [REDACTED]'s son would probably drop out of college, could not remain in his current home, and would need to reside with his mother in New York if his father left the country. Mr. [REDACTED] stated that Ms. [REDACTED] indicated that she is Jewish, attends synagogue every Saturday, and studies Hebrew.

In her sworn statement the applicant's wife conveyed that she has a close relationship with her husband, it is hard as a single parent to work and raise teenage sons who need the support and stability of a man in the family, and her husband has financially supported the family.

The applicant's mother-in-law stated in her affidavit that her daughter and son-in-law are living with her while they look for their own home, and she states that she has a close relationship with her son-in-law.

In their sworn statement, the applicant's sons attest to their close relationship with their mother and stepfather and their stepfather's close relationship with their mother.

In his sworn statement, [REDACTED] stated that he entered the United States without inspection in 1986 and was deported. He stated that after 19 years he obtained a B-1 visa and entered the United States on that visa. He stated that he has a close relationship with his wife.

The letters by [REDACTED] stated that [REDACTED] had been working there since July 2002 and that he earns a yearly income of \$19,760.

The residential lease conveys that [REDACTED] and his spouse's monthly rent is \$450 from November 2002 to November 2003. In addition to other invoices, the record reflects invoices for a gas bill, Comcast, and Verizon.

The record indicates that the applicant's children do not hold legal status in the United States; thus, any hardship experienced by the applicant's spouse in connection with the applicant's children will not be considered in assessing hardship.

In rendering this decision, the AAO has considered all of the submitted evidence.

The record establishes extreme hardship to the applicant's spouse if she were to remain in the United States without her husband.

In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission."

The applicant's step-sons are approximately 18, 19, and 21 years old. As previously stated, although hardship to [REDACTED] step-sons are not a consideration under section 212(i) of the Act, the hardship endured by Mr. spouse, as a result of her concern about the well-being of her sons, is a relevant consideration.

The AAO finds that the detailed psychological evaluation, which indicates that one of the applicant's step-sons has a learning disability and is under a court order to attend a residential school because of addiction to marijuana and PCP, and the sworn statement by the applicant's wife, in which she conveys that her husband has provided emotional support to her and will help raise her sons, establish that the applicant's wife's would experience extreme emotional hardship that is unusual or beyond that which is normally to be expected upon removal if she were to remain in the United States without her husband.

The AAO finds that the record conveys that the applicant's wife would experience extreme hardship if she were to join her husband to live in the Dominican Republic.

[REDACTED] conveys that if [REDACTED]'s wife were to accompany her husband to the Dominican Republic, she would leave behind a son who requires supervision because of drug addiction and behavioral problems. And if her son were to accompany his mother to the Dominican Republic, [REDACTED] indicates that it would be unlikely that her son would receive the intensive treatment available in the United States. The AAO finds that in light of the problems that the applicant's spouse has dealt with her son, she would experience extreme hardship if she were to join her husband to live in the Dominican Republic.

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's spouse and to his step-sons, his lack of a criminal history and his employment history. The unfavorable factors in this matter are the applicant's deportation and use of a false visa in 1986; his unlawful entries into the United States in April 2000 and August 22, 2001; and his periods of unauthorized presence.

The AAO finds that the unfavorable factors in this case, are outweighed by the hardship imposed on the applicant's spouse and step-sons as a result of his inadmissibility. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter. Accordingly, the appeal will be sustained. The application will be approved.

**ORDER:** The appeal is sustained. The application is approved.