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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

APR 23 2007

FILE: [redacted] Office: PROVIDENCE, RI Date:

IN RE: [redacted]

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:

[redacted]

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 Officer in Charge, Providence, Rhode Island, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic 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 attempting to procure immigration benefits under the Act by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the father of a U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and child.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 9, 2002.

The record reflects that, on May 18, 2000, the applicant applied for admission at the New York, New York Port of Entry. The applicant presented a fraudulent passport containing a valid U.S. nonimmigrant visa under the name "[redacted]" and with a date of birth that did not correspond to the applicant's true date of birth. On August 10, 2000, the applicant married [redacted], a naturalized U.S. citizen. On October 25, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by [redacted] On October 25, 2000, the applicant filed the Form I-601 with documentation to establish that the denial of the waiver would result in extreme hardship to his spouse. On December 19, 2001, the applicant appeared at Citizenship and Immigration Services' (CIS) Providence, Rhode Island Field Office. The applicant testified that he had obtained a fraudulent Dominican Republic passport with his middle name as his last name and a different date of birth. He used the fraudulent passport in order to obtain a nonimmigrant visa to the United States, with which he entered the United States in 1997 and 2000. He testified that he had used the fraudulent passport under an altered name and date of birth because he had previously been denied a nonimmigrant visa.

On appeal, counsel contends that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act because he did not misrepresent a material fact by concealing his identity. Alternatively, counsel asserts that the applicant's spouse would suffer extreme hardship. *See Counsel's Brief,* dated November 12, 2002. In support of his contentions, counsel submits the referenced brief, a psychological report, a birth certificate for the applicant and Ms. Sanchez' U.S. citizen child, and letters of recommendation. The entire record was reviewed in rendering a decision in this case.

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

> (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.
>
> . . . .

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(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 officer in charge based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the record reflecting that the applicant obtained a visa and was admitted to the United States on two occasions by presenting a fraudulent passport. On appeal, counsel contests the officer in charge's determination of inadmissibility. Counsel asserts that the officer in charge did not make a finding that the applicant's use of his altered name and date of birth constituted a material misrepresentation and that the applicant's misrepresentations do not meet the definition of "materiality" as stated in the Foreign Affairs Manual and *Matter of S_ and B_C_*, 9 I&N Dec. 436 (BIA 1960; AG 1961).

In *Matter of S_ and B_C_*, the Attorney General found that a misrepresentation made in connection with an application for a visa or with entry into the United States is material if either (1) the alien is excludable on the true facts; or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. The applicant testified that he had previously been denied a visa and obtained the fraudulent passport in order to apply for a nonimmigrant visa prior to the expiration of the period of time during which the U.S. Consulate designated an applicant denied a visa must wait before reapplying. The applicant's concealment of his true identity shut off a line of inquiry that would have resulted in a denial of his nonimmigrant visa application. Accordingly, the AAO finds that the misrepresentation was material to obtaining the visa and is a violation of section 212(a)(6)(C)(i) of the Act. Moreover, not only did the applicant make a material misrepresentation in regard to his identity, by altering his surname and date of birth on his visa application, he also presented a fraudulent passport to obtain a visa on one occasion and entry into the United States on two occasions. As such, the applicant obtained a visa and entry into the United States by fraud.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen child will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether they remained in the United States or accompanied the applicant to the foreign country of residence.

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

The record reflects that [redacted] is a native of the Dominican Republic who became a lawful permanent resident in 1974 and a naturalized U.S. citizen in 1996. The applicant and [redacted] have a three-year old daughter who is a U.S. citizen by birth. The record reflects further that the applicant is in his 30's and [redacted] is in her 40's [redacted] may have some health concerns.

On appeal, counsel asserts that the applicant's spouse and daughter would suffer significant and adverse psychological and emotional impacts if they had to live without the applicant. Counsel asserts that [redacted] and the applicant depend on each other for emotional and moral support. Counsel asserts that the totality of the circumstances is sufficient to establish extreme hardship. [redacted] in her affidavit, states that she and the applicant do everything together, he supports her in her endeavors and is her best friend. She states that they depend on each other financially and that she would be unable to pay the bills with her income. She states that she and the applicant have been saving to buy a house and she would be unable to accomplish the dream of owning a house without the applicant's income. She states that she may also have to move back in with her mother, which would cause her mother an extreme hardship.

An October 12, 2002, letter written by [redacted] a clinical psychologist, indicates that he is treating [redacted] and the applicant for symptoms of Generalized Anxiety Disorder associated with the

applicant's immigration status. The letter states that [redacted] is the principle support for her mother, sister and two nephews, and that her sister appears to be experiencing major psychiatric difficulties.

While [redacted]'s letter states he is treating the applicant's spouse for symptoms of general anxiety disorder, he fails to identify these symptoms, indicate their impact on [redacted] mental and physical health, or describe the type or extent of the treatment she requires. As a result, [redacted] letter is of limited use in identifying the status of [redacted] mental or physical health and will be given little evidentiary weight. Additionally, the AAO notes that the psychological evaluation was conducted after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit that the applicant submitted with the Form I-601. Accordingly, the record does not establish that [redacted] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly experienced by aliens and their families upon removal. While the AAO acknowledges that [redacted] has understandably experienced anxiety at the prospect of being separated from the applicant and the separation of her child from the applicant, the record does not demonstrate that her anxiety is greater than that felt by others in similar circumstances. Additionally, the record reflects that [redacted] has family members, such as her parents and siblings, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

Financial records report that, in 2000, [redacted] earned approximately $28,186. The record does not establish that [redacted] would be unable to perform her work duties or daily activities due to any mental or physical illnesses or that the applicant's absence would result in her inability to function on a daily basis. The record shows that, even without assistance from the applicant, [redacted] has, in the past, earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines* http://aspe.hhs.gov/poverty/figures-fed-reg.shtml. Although the letter from [redacted] states that [redacted] is a principle source of support for her mother, sister and two nephews and that her sister has serious mental heath problems that will require treatment, the record does not establish that these family members are financially or physically dependent upon her. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). While [redacted] may have to lower her standard of living, move from her current accommodations and may not have the opportunity to own a house, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [redacted] if she had to support herself without income from the applicant, even when combined with the emotional hardship described above.

Counsel asserts that [redacted] would suffer extreme hardship if she accompanied the applicant to the Dominican Republic because she has family ties in the United States and has minimal ties abroad. Counsel asserts that [redacted] has lived in the United States for an extended period of time and that her emotional and psychological health has been adversely affected by the possible relocation. Counsel asserts that economic conditions in the Dominican Republic are poor and that [redacted] financial status would diminish and she would have difficulty finding employment.

The psychological report states that [redacted] is experiencing particular distress given the possibility that she would need to return to the Dominican Republic to be with the applicant, which is most difficult due to her role as principle provider for her mother, sister and two nephews.

Having analyzed the hardships the psychological report and counsel claim [redacted] would suffer if she were to accompany the applicant to the Dominican Republic, the AAO finds that they do not constitute extreme hardship. The record reflects that the applicant was employed as an attorney in the Dominican Republic. There is no evidence that [redacted] and the applicant would be unable to find *any* employment in the Dominican Republic. Additionally, economic detriment of this sort is not unusual or extreme. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996)*; Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir.1986). As discussed above, the record does not establish that [redacted] suffers from a physical or mental condition that could not be treated in the Dominican Republic. The record does not establish that [redacted] mother, sister and two nephews are dependent on her financially or physically. While the hardships that would be faced by [redacted] with regard to relocating to the Dominican Republic--readjusting to the culture, economy and environment; separation from friends and family; the separation of her child from her friends and family; and her and her child's inability to obtain benefits and education they would receive in the United States--are unfortunate, they are what could be expected by any spouse accompanying a removed alien to a foreign country. Additionally, as previously noted, [redacted] is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [redacted] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] will face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS, Supra*; *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of

discretion. The AAO notes that counsel's assertions in regard to the applicant's misrepresentation as a single incident and not as a pattern or practice of fraud relates to whether the applicant would merit 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.