U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEWARK, NJ Date: OCT 01 2007

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 District Director, Newark, New Jersey, denied the waiver application and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Dominican Republic who was found 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 attempting to enter the United States by fraud. The applicant is the beneficiary of an approved Petition for Amerasian, Widow or Special Immigrant (Form I-360). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen sons.

The district director concluded that the applicant 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 District Director*, dated September 28, 2005.

The record reflects that, on March 8, 2001, the applicant married her spouse, [redacted]. On April 16, 2001, [redacted]z filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on September 24, 2004. On August 2, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130. The applicant appeared at Citizenship and Immigration Services' (CIS) Newark, New Jersey District Office on April 29, 2003. The applicant admitted that, in 1994, she had attempted to enter the United States by presenting a passport bearing the name "[redacted] and had been refused admission. On August 25, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her husband and two sons.

On March 22, 2006, the applicant filed the Form I-360 as the battered spouse of a U.S. citizen. On August 25, 2006, the Form I-360 was approved with a priority date of April 16, 2001. On October 3, 2006, the applicant filed a second Form I-485 based on the approved Form I-360.

Counsel contends that the applicant and her two sons would suffer extreme hardship if the applicant were denied a waiver. *See Counsel's Cover Letter,* dated June 6, 2007. In support of her contentions, counsel submits the referenced cover letter, an affidavit from the applicant, copies of educational evaluations and medical documentation and country conditions reports. The entire record was considered in rendering this decision.

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 that:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

> (iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General [Secretary] that--
>
> > (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
> >
> > (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.
>
> (II) For purposes of subclause (I), an alien described in this subclause is an alien--
>
> > (aa)(AA) who is the spouse of a citizen of the United States;

Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child, and accordingly, as the beneficiary of an approved Form I-360, the applicant must demonstrate extreme hardship to herself or her U.S. citizen sons. 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 concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is 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 (BIA) provided a list of non-exclusive factors to determine 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 the 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).

Each of the *Cervantes* factors listed above is analyzed in turn. First analyzed is the financial impact of the applicant's departure from the United States. Counsel asserts that the applicant is in the process of fighting for child support from her husband and relies on her U.S. citizen brother to provide her with financial support. Counsel asserts that if the applicant is forced to return to the Dominican Republic she will find herself in a desperate financial situation. The applicant, in her affidavit, asserts that she currently works evenings so that she can be with her sons during the day and relies on her brother because her husband has not paid her any child support. She states that she would be unable to have the resources in the Dominican Republic to support herself and her children.

The next *Cervantes* factor is country conditions in the Dominican Republic. United States Department of State Country Reports on Human Rights Practices for the Dominican Republic and country condition reports, indicate that approximately 25 percent of the national population lives below the poverty line and there was a 16.1 percent or more unemployment rate. *United States Department of State Country Reports on Human Rights Practices for the Dominican Republic*, www.state.gov/g/drl/rls/hrrpt/2006/78889.htm; *2003 World Bank Poverty Report.* The applicant stated that she would have difficulty finding the resources in the Dominican Republic to support herself and her children.

Another *Cervantes* factor is significant health conditions. The applicant, in her affidavits, states that she has received counseling for depression related to her domestic situation prior to leaving her husband, but has been unable to receive consistent treatment since she moved to Pennsylvania. Medical documentation indicates that, in March 2007, the applicant suffered a panic attack and was treated at a local emergency room and prescribed Xanax. The applicant states that this panic attack was related to the stress of being a single mother with two sons who have special needs. Speech, Language and Occupational Therapy documentation indicates that both of the applicant's sons have received and still require special education, which is provided by their local school district. The documentation indicates that the applicant's eldest son was initially diagnosed with moderate receptive developmental delays, severe expressive developmental delays of language skills with delayed articulation and a suspected phonology disorder. Since 2003, the applicant's eldest son has received treatment through an Individual Education Program (IEP) and special education. Since 2005, the applicant's youngest son has received treatment through an IEP and special preschool education. The applicant states that both of her sons have violent episodes and will act out arguments that she and her husband had. The applicant

believes that her children's behavioral problems are a result of the abuse that they witnessed and suffered. The applicant states that her children and she would not have access to the resources or alternative resources required to treat her children's educational and behavioral problems in the Dominican Republic.

The final *Cervantes* factor is family ties in the United States and the Dominican Republic. The record reflects that the applicant has one U.S. citizen brother who resides in Pennsylvania. The applicant has two U.S. citizen sons who reside in Pennsylvania. The applicant's parents reside in the Dominican Republic.

The applicant survived an abusive marriage and has lived in the United States for seven years. She has a steady job and a U.S. citizen brother who helps to support her and her children. The applicant is in the process of obtaining child support from her husband in the United States. The applicant's children survived their parents' abusive marriage and have never lived in the Dominican Republic, do not possess fluent Spanish skills and already have developmental delays that require special education needs. Returning the applicant and her children to the Dominican Republic, where she and her children would live in poverty and would be unable to receive assistance in regard to their past domestic situation and special education needs, would create hardship to her and her children. Alternatively, if the applicant's children resided in the United States without the applicant they would face the combination of their development and language delays, behavioral problems and the loss of their only custodial parent. The totality of the record demonstrates that the applicant and her children would suffer extreme hardship if the applicant is removed to the Dominican Republic.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant and her children, the passage of more than 17 years since the applicant's immigration violation, the applicant's family ties in the United States. The adverse factor in this matter is the applicant's fraud in attempting to enter the United States. The favorable factors outweigh the adverse factors; accordingly, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.