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

U.S. Citizenship
and Immigration
Services

[redacted]

#5

DATE: AUG 14 2012 Office: MOUNT LAUREL, NJ FILE [redacted]

IN RE: Applicant: [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:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of the Dominican Republic who used a fraudulently obtained visa to enter the United States. The applicant 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 26, 2010.

On appeal, counsel for the applicant asserts that the Field Office Director used the wrong standard in adjudicating the applicant's waiver, and that the applicant's son and spouse will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received May 24, 2010.

Section 212(a)(6)(C) of the Act, 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 indicates that the applicant presented a passport with a false name and fraudulent U.S. visa when entering the United States through the Miami International Airport on April 20, 2005. Thus, the applicant entered the United States by misrepresenting her identity and eligibility for admission to the United States. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

The record contains, but is not limited to, the following evidence: statements from counsel for the applicant; a statement from the applicant's spouse; a Physician Summary pertaining to the applicant's child by [redacted] MA; a copy of a UNICEF article on childhood development in the Dominican Republic; a copy of an intake form and Biopsychosocial Assessment of the applicant's spouse from the Nueva Vida of NJ Behavioral Center of New Jersey; a copy of an attendance record for Nueva Vida therapy sessions for the applicant's spouse; a statement from [redacted] MD, dated April 1, 2010, pertaining to the applicant's spouse; a copy of a lease for a residential apartment; a letter of employment for the applicant's spouse; a statement from [redacted] MD, pertaining to the applicant's child; a copy of Country Specific Information: Dominican Republic, published by the U.S. State Department, Bureau of Consular Affairs, June 22, 2009; and photographs of the applicant, her spouse and their child.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 or her child 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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 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 Board 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 Board 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 Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of 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 Board 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., Matter of 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). 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*, 138 F.3d at 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.

On appeal, counsel for the applicant asserts the applicant's child is a special needs child and would not be able to find adequate medical services in the Dominican Republic. *Statement, Counsel for the Applicant*, dated March 25, 2011. She previously explained that the applicant's son has atopic dermatitis and would not have access to adequate medical facilities in the Dominican Republic to treat his condition. *Reply to Notice of Intent to Deny I-601 Waiver of Excludability*, April 6, 2010.

The applicant's spouse has submitted a letter stating that he would not wish to reside in the Dominican Republic if the applicant is removed. *Statement of the Applicant's Spouse*, dated February 2, 2010. He states that he is not from the Dominican Republic, that he has become accustomed to life in the United States, and that his son would not receive adequate education or proper medical care. He further states that his son would miss the educational opportunities available in the United States and that the Dominican Republic is currently flooded with refugees fleeing the earthquake which devastated Haiti in 2010.

The record includes a country profile on the Dominican Republic by the U.S. State Department. Based on the background information provided in the reports the AAO is able to determine that a much lower quality of life exists in the Domican Republic. The AAO will take this factor into consideration when aggregating the impacts on the applicant's spouse due to relocation.

The AAO acknowledges that the applicant's spouse is not from the Dominican Republic and would have to sever his community ties to the United States upon relocation. The AAO recognizes that the applicant's spouse's assertion concerning the flow of refugees burdening the Dominican Republic's infrastructure is probably true, however, without evidence to corroborate his assertion the applicant has not shown the extent that such conditions would impact her spouse.

Counsel has asserted that the applicant's son has atopic dermatitis and would not be able to receive treatment for his condition in the Dominican Republic. She has referred to the applicant's son as a "special needs" child who would not have access to adequate developmental resources in the Dominican Republic.

Children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant to the extent that it impacts the qualifying relative. In this case, the record indicates that the applicant's son has been diagnosed with atopic dermatitis. Dr. [redacted] states in a March 23, 2010, letter that the applicant's son has atopic dermatitis and that he has been treating the child. The UNICEF article submitted into the record concludes that children who live in conditions of poverty in the Dominican Republic have limited access to health and educational services. Based on these observations, the AAO will give consideration to the impacts on the applicant's spouse arising from the medical conditions of their son and the diminished availability of health care infrastructure in the Dominican Republic.

The record also contains a Physical Summary pertaining to the applicant's son compiled by [redacted] MA. The assessment indicates that the applicant's son is experiencing delays in his speech development and motor skills. Ms. [redacted] ecommends in her assessment that the applicant's son attend a one hour session once a week for six weeks to advance his speech skills. She also recommends that the applicant's son attend a one hour session weekly for sixteen weeks to advance his motor skills. When this factor is considered the AAO can determine that relocation would impact the applicant's son's ability to receive his developmental therapy, and that this would result in an indirect impact on the applicant's spouse upon relocation because he would have to seek out additional educational and developmental resources.

When the hardship factors upon relocation are considered in light of the common impacts of relocation, the AAO finds that they rise above the common impacts to a degree of extreme hardship.

With regard to hardship upon separation, counsel previously asserted that the applicant's spouse will experience emotional hardship due to the applicant's removal. *Reply to Notice of Intent to Deny I-601 Waiver of Excludability*, April 6, 2010. The record contains a copy of a hand-written form called a Biopsychosocial Assessment in which the applicant's spouse is diagnosed as having Depressive

Symptoms and recommending that he attend therapy sessions. The record also contains an attendance record indicating that the applicant's spouse has been attending therapy sessions. The assessment, compiled by the Nueva Vida Behavioral Center, is hand-written and some cases not entirely legible. Nonetheless, it is sufficient to establish that he is experiencing some emotional impact and has been attending therapy to help him deal with his condition. The AAO will give some consideration to the emotional impact on the applicant's spouse upon relocation.

The AAO also notes the presence of other hardship factors, such as the development delays experienced by the applicant's child, requiring developmental therapy and additional educational resources. The record also indicates that the applicant's child has been diagnosed with Atopic Dermatitis, and must receive routine medical treatment for the condition. Although children are not qualifying relatives, the presence of these conditions will have an indirect impact on the applicant's spouse because of the need for a heightened standard of medical care and the need to provide developmental therapy for her child.

When these impacts are considered in light of the common impacts arising from separation, the AAO finds that they rise to the level of extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now consider whether she warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of his U.S. citizen child, the extreme hardship his spouse would experience due to his inadmissibility, and the lack of any criminal record while residing in the United States. Although the applicant's immigration violations are serious matters, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *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.