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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

H5

[redacted]

Date: MAR 30 2012 Office: NEW YORK, NY [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and child in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the District Director*, dated September 17, 2009.

On appeal, counsel contends the district director failed to consider all of the favorable factors in the case. According to counsel, the applicant financially assists the family and has childcare responsibilities, including taking their son to school. In addition, counsel contends the applicant would not have reentered the United States before the five year bar elapsed, but that he did not know the exact date he was excluded from the United States. Furthermore, counsel contends the applicant did not misrepresent anything on his visa application as it was prepared and completed by someone else.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on May 12, 2001; an affidavit from [redacted] a letter from [redacted] mother; copies of tax returns, pay stubs, and other financial documents; letters from the applicant's and [redacted] employers; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> 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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien

> would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes in a sworn statement, that on November 28, 2000, the applicant attempted to enter the United States by presenting an I-551 resident alien card that was not his own. The applicant was placed in expedited removal proceedings, removed the same day, and informed he was prohibited from entering the United States for five years from the date of departure. The record further shows that less than five years later, on or about June 20, 2004, the applicant filed a nonimmigrant visa application and was admitted to the United States on June 27, 2004, using a K3 visa.

To the extent counsel contends the applicant did not misrepresent any information on his visa application because it was prepared by someone else, the Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds counsel's contention to be unpersuasive. The applicant indicated on his visa application that he had never been refused entry to the United States or had been the subject of a deportation hearing, which is untrue. The applicant signed the visa application, affirming that all of the information in the application was accurate to the best of his knowledge. In addition, the AAO notes that the entire application is written in Spanish, the applicant's native language. Therefore, even if someone else filled out the form, by signing the visa application, the applicant has misrepresented a material fact in order to gain an immigration benefit. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

In this case, the applicant's wife, [redacted] states that her husband is an integral part of her life and that they have a three-year old son together. According to [redacted] if she stays in the United States without her husband, she would suffer extreme emotional hardship because they are very close and have good communication. Furthermore, [redacted] contends that if she relocated to the Dominican Republic to be with her husband, they would all suffer because they do not know

where they would live and it would be very difficult to find employment. She contends she has never lived or worked in the Dominican Republic and her entire family resides in the United States.

After a careful review of the record, there is insufficient evidence to show that [redacted] will suffer extreme hardship if her husband's waiver application were denied. Although the AAO is sympathetic to the family's circumstances, if [redacted] decides to stay in the United States, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Regarding the financial hardship claim, although the record contains tax returns, copies of pay stubs, and a few bills, there is insufficient evidence addressing [redacted] regular, monthly expenses, such as rent. The AAO notes that the record contains a letter from [redacted] mother stating that the applicant's family "all reside at [her] address" and that they pay all of the rent and utilities; nonetheless, there is no evidence showing the amount of the monthly rent. Although the AAO does not doubt that [redacted] will suffer some financial hardship upon her husband's departure from the United States, without information addressing her monthly expenses, there is insufficient documentation in the record to evaluate the extent of her hardship. To the extent the couple's U.S. citizen child may suffer, the statute considers extreme hardship to a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The only qualifying relative in this case is the applicant's U.S. citizen wife, [redacted] and, significantly, there is nothing in the record specifically addressing how any hardship the couple's son may suffer would cause hardship to [redacted] Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [redacted] would experience amounts to extreme hardship.

Furthermore, the record does not show that [redacted] would suffer extreme hardship if she relocated to the Dominican Republic to avoid the hardship of separation. The record shows that the couple married in the Dominican Republic, and according to the applicant's Biographic Information form (Form G-325A), both of his parents continue to reside in the Dominican Republic. Therefore, the couple has some family ties in the Dominican Republic. To the extent [redacted] contends it would be very difficult to find employment, there is no evidence in the record to support this contention. In sum, the record does not show that relocating to the Dominican Republic would make her hardship extreme, unique, or atypical compared to other individuals in similar circumstances. *See Perez v. INS, supra*. Considering all of these factors cumulatively, the AAO finds that there is insufficient evidence to show that the hardship [redacted] would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. 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.

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 is dismissed.