**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Service
*Office of Administrative Appeals*
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JAN 0 4 2013 OFFICE: NEW YORK, NEW YORK [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(d) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(d) and 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York and 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 under section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for aiding and abetting an alien to enter the United States in violation of law, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

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. *See Decision of the District Director,* dated March 30, 2010.

On appeal counsel contends that the adjudicating officer abused his discretion as the record contains evidence showing that the applicant's spouse would suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received April 29, 2010.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; the applicant's previous adjustment of status and waiver applications and denials; a hardship affidavit; medical-related records; financial-related records; a country conditions report on the Dominican Republic; a letter from the applicant's landlord; sworn statements from the applicant concerning her immigration violations; and the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

The record shows that the applicant was arrested on April 24, 1998 and charged with three counts relating to a controlled substance, to wit: (1) Cocaine Trafficking, over 14 grams, in violation of Massachusetts General Law chapter 94C §32E; (2) Cocaine Possession, Class B, in violation of 94C §34; and (3) Cocaine Distribution, in violation of 94C §32A(c), for her conduct on April 23, 1998. All three counts were dismissed on October 1, 1998. The applicant was subsequently arrested on November 24, 1998 and charged with Possession of a Controlled Substance with Intent to Sell, in violation of New York Penal Law section 220.16. The case was dismissed on December 16, 1998. As the record does not show that the applicant was convicted for any of the crimes for which she was charged or that she admitted to the essential elements of said crimes, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude, or section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II) for having been convicted of a crime relating to a controlled substance. As presently constituted, the record also lacks adequate evidence to support that there is sufficient reason to believe that the applicant has been involved in

the illicit trafficking of a controlled substance, which would render her permanently inadmissible under section 212(a)(2)(C)(i) of the Act, 8 U.S.C. § 1182(a)(2)(C)(i).[1].

Section 212(a)(6)(E) of the Act provides:

> (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible. . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), provides:

> The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record shows that the applicant purchased fraudulent documents in order to obtain United States visas for herself and her daughter and used said documents in or about September 1996 to enter the United States. Based on the foregoing, the applicant was found to be inadmissible pursuant to section 212(a)(6)(E)(i) of the Act for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of law. As the record shows that the only smuggled alien was the applicant's own daughter, the applicant is eligible for consideration for a waiver under section 212(d)(11) of the Act. However, the applicant has not established eligibility for a waiver under section 212(i) of the Act, as discussed below. Accordingly, no purpose is served in engaging in discretionary analysis for the purpose of assessing whether the applicant merits approval of a waiver under section 212(d)(11) of the Act.

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

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[1] While the record lacks adequate information or documentation to determine whether there is reason to believe that the applicant has been involved in the illicit trafficking of a controlled substance, it is noted that a conviction for a trafficking offense is not required to render an applicant permanently inadmissible under section 212(a)(2)(C)(i) of the Act. However, as the appeal will be dismissed on alternate grounds, the AAO need not seek additional documentation or clarification regarding the applicant's conduct that led to multiple trafficking charges, and we need not settle whether she is inadmissible under section 212(a)(2)(C)(i) of the Act.

(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.

As noted, the applicant entered the United States in or about September 1996 by presenting fraudulent documents she purchased bearing an identity not her own. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this inadmissibility finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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.

The applicant's spouse is a 49-year-old native and citizen of the United States, born in Puerto Rico and married to the applicant since June 1999. Though the applicant's spouse states that he lives with the applicant and his 19-year-old stepdaughter, [redacted] the district director notes that the record shows he has been residing in Puerto Rico since at least 2005. Counsel does not contest or address this finding on appeal. In a sworn letter dated February 24, 2010, [redacted] writes that the applicant has been living with her in New York since May 1997. The applicant has two other adult children from a prior marriage, 22-year-old [redacted] and 25-year-old [redacted]

The applicant's spouse states that he suffers from HIV, has started to develop respiratory and pulmonary problems associated with AIDS, and receives treatments in Puerto Rico. The record contains a total of three medical-related documents. The first is a letter dated "10/6/08" which indicates that "the patient" is "totally disabled to perform a job that provides income or duties appropriate for their age, incapacitated and preparation," and "receives medical treatment." As noted by the district director, this document does not identify the patient to which it refers nor does it indicate the nature of the medical treatment "the patient" receives or the nature of said disability. Counsel does not address these deficiencies on appeal. The second medical-related document in the record is an illegible handwritten note on a prescription pad bearing the name of

, in Puerto Rico. The only decipherable information contained therein is that the applicant's spouse has been treated "in our office since 2005." As clearly stated by the district director, the note does not identify any specific medical condition suffered by the applicant's spouse or any treatment he has been receiving. Counsel does not address these deficiencies on appeal. The third and most recent medical-related record, submitted on appeal, is another handwritten note on a prescription pad bearing the name and dated sometime in April 2010. What can be deciphered from this note is "Case of … H.I.V (A.I.D.S); Chronic Bronchitis, Neuropathy; Depression…" and that the patient should "avoid travel, cold weather; or risk … exposure." Due to the note's illegibility, the AAO is unable to decipher the words indicated in dots above. No details are provided on this note or in the record as a whole from which an accurate assessment can be made concerning the applicant's spouse's current health status, the severity of any of his conditions, what if any treatment he may be undergoing, what if any medications he may be taking, or his prognosis or treatment plan for the future. As noted previously by the district director, going on record without supporting documentation 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)).

The applicant's spouse states that the applicant provides significant emotional and financial support and it is a testament to her that she has stayed with him all these years despite his medical condition. He indicates that the applicant provides for the family and helps buy his medicine which can be very expensive. The record contains no information regarding any medication taken by the applicant's spouse or the cost thereof, and no corroborating documentary evidence has been submitted. The applicant's spouse worries he will be unable to pay for his medicines, provide for his health care and take care of himself without the applicant and while "AIDS is a death sentence," she has vowed to care for him no matter how ill he becomes. He expresses fear of losing his life companion but as noted by the district director, it appears from the record that the applicant and her spouse have been living separately since at least 2005 and counsel does not contest or address this finding on appeal.

The applicant's spouse also fears becoming destitute and being unable to provide for himself and his family if the applicant is removed. A Social Security Administration letter, dated February 24, 2010 and addressed to the applicant's spouse in Puerto Rico, indicates that his monthly Social Security benefit then was $821.30. A W-2 statement for the applicant and the couple's 2009 joint tax return reflects a total gross income of $31,245 earned solely by the applicant through her employment with , Inc. A letter from the company, dated May 27, 2008, indicates that the applicant works full-time/40 hours per week, at an hourly rate of $20.25. The record contains nothing to suggest that the applicant's spouse earns any income outside of Social Security and it is noted that even on the applicant's spouse's affidavit of support filed on behalf of the applicant, the only income listed is that of his stepson, Evidence in the record shows earned an annual salary of just under $27,000 at that time. It is thus reasonable to conclude that the applicant earns a far greater percent of the couple's overall income than her spouse and he relies upon her to a significant degree for financial support. It is unclear, however, whether he receives regular financial support from his adult stepchildren and/or any of his family members in Puerto Rico and whether such would be sufficient to meet his financial obligations in the event of the

applicant's removal. Nowhere in the record are the applicant's spouse's regular expenses identified or documented, and only a single utility bill has been submitted – that for the applicant's apartment in New York. It is unknown with whom the applicant's spouse resides in Puerto Rico or who pays his expenses related thereto.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including his marriage of more than 13 years to the applicant and the likely emotional effects of permanent separation, his medical conditions as best as can be deciphered from the record, and the economic challenges he would likely face without the applicant's financial support at its current level. The AAO has also considered the lack of any documentary evidence in the record delineating or demonstrating the applicant's spouse's expenses or detailing his health condition and prognosis despite numerous indications by the district director that such deficiency undermines a finding of extreme hardship, as well as the fact that the applicant and his spouse appear to have been living separately by choice for at least the last seven years. The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse indicates that he was born in Puerto Rico and has lived his entire life in the United States. He maintains, without explanation or corroboration, that because he is not a national of the Dominican Republic, he would suffer significant hardships related to his acceptance and admission to that country. The applicant's spouse states that he is fearful that the healthcare and quality of life in the Dominican Republic will be dangerous to his medical welfare and that the impoverished economy and harsh country conditions would cause extreme hardship both to him and his 19-year-old stepdaughter in the event she decides to relocate thereto. Counsel contends that one "can infer that the quality of healthcare in the Dominican Republic is very inferior to what is available in the U.S.," but submits no documentary evidence addressing healthcare in the country. Counsel refers to specific pages of the CIA World Factbook for an unknown year with regard to the Dominican Republic's economy, unemployment, poverty and income inequality, but the resource to which he refers has not been submitted for inclusion in the record. Instead, the only country conditions document submitted is the U.S. State Department's 2006 Dominican Republic Country Report on Human Rights Practices, released March 6, 2007. The report addresses none of the hardship assertions discussed above. The AAO is unable to "infer" from a single outdated human rights report, which does not address either economic or healthcare issues, that the applicant's spouse would suffer economic and healthcare-related hardships in the Dominican Republic.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his adjustment to a country in which he has never resided, his lifelong residence in the United States and the likelihood that he has developed close family/community ties herein, his significant medical conditions and stated concerns that the quality of healthcare in the Dominican Republic would not be comparable to what he is receiving in Puerto Rico, and asserted economic, employment, and "acceptance and admission" concerns. Considered in the aggregate, the AAO finds that the evidence in the record is insufficient to

demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Dominican Republic to be with her.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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. 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.