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

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 0 8 2013 OFFICE: PROVIDENCE, RHODE ISLAND 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.

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 in accordance with the instructions on 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 Field Office Director, Providence, Rhode Island, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry as well as having procured entry for herself and child to the United States through willful misrepresentation. The record also reflects that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of the law. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and child in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated December 21, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) should reconsider the denial of the applicant's waiver application based on the evidentiary documentation. *See Statement in Support of Notice of Appeal or Motion (Form I-290B)*, dated February 22, 2012.

The record includes, but is not limited to: correspondence from counsel; letters of support; identity, medical, employment, financial, and academic documents; photographs; and documents in support of conditions in the Dominican Republic. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, 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 Act is inadmissible.
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> ...
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> (iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having attempted to procure admission to the United States on March 28, 1989, by presenting a lawful permanent resident card that did not belong to her. The Field Office Director also found the applicant inadmissible for

having procured a B-2 nonimmigrant visa and not revealing during the application process that she was previously denied admission for having presented a lawful permanent resident card that did not belong to her in 1989. The record supports the findings, and the AAO concurs that the misrepresentations were material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record further reflects that the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of the law.[1]

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

> (E) SMUGGLERS.-
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> (i) In General.- 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.
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> ...
>
> (iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

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[1] The AAO notes that in his decision, the Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, in part, for having procured admission for her child to the United States through willful misrepresentation. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The record reflects that the applicant was admitted to the United States upon presenting a B-2 nonimmigrant visa on October 31, 2001. Upon admission, the applicant also presented a B-2 nonimmigrant visa and Dominican Republic passport on behalf of her youngest child. The passport and visa did not belong to her child. Based on the foregoing, the applicant is found to be inadmissible pursuant to section 212(a)(6)(E)(i) of the Act. As the record shows that the smuggled alien is the applicant's own child, the applicant is eligible for consideration for a discretionary waiver under section 212(d)(11) of the Act.

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

> (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant, her children, and her aunts can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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).

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 of Immigration Appeals (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 Id.* at 568; *In re 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 (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.*, *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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 asserts that he would suffer extreme emotional and financial hardship in the applicant's absence as: he has known the applicant since 1998, and they attend church activities together; she has provided him consolation and emotional support since his mother's death from lymphoma cancer, and without her, he would suffer severe stress because he loves her deeply and dreads thinking about their possible separation from one another; they share many dreams together, and continue to build a strong, loving relationship; he needs her so that he can continue to work and earn a living as she maintains their apartment by doing all the related chores; and she and his daughter are the two most important people in his life, she is the unifying family member for him and his daughter, and his daughter loves her. The applicant further asserts that: she and her son have been happy since entering the United States; she has a great relationship with her spouse, family, and friends, and she helps others like her ill aunts; she is thankful for the support that she has received from the family, doctors, and teachers concerning her son's epilepsy and Attention Deficit Hyperactivity Disorder (ADHD); her spouse loves her son as if her son were his own; and she is currently in school so that she could progress and not become a public charge. The applicant's son also discusses that: he does not know what will happen to him without his mother as

she is his life, she ensures that he takes his medications and does his homework, and she takes him to his medical appointments; he would be unable "to take the pain in his heart" if she were sent to the Dominican Republic, and he would be unable to live without her; other kids at his school talk about how nice his mother is and ask for her; she makes money to pay for his brother's medications in the Dominican Republic; and he would cut his hair and give it to kids who are sick with cancer if his mother were permitted to reside in the United States as a lawful permanent resident.

Although the applicant's spouse may experience some hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO notes that the record does not include any evidence of the applicant's spouse's current mental health or his inability to function in the applicant's absence. Absent an explanation in plain language from the treating mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Additionally, the record is sufficient to establish that the applicant's spouse has been employed in a full-time capacity at the since June 27, 2007. Also, the record includes some evidence of his financial obligations such as his monthly, residential rent. However, the AAO notes that the record does not include sufficient evidence of his financial obligations and his inability to meet those obligations in the applicant's absence. The AAO is thus unable to conclude that the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship that the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

The applicant's spouse contends that he would experience extreme hardship if he relocated to the Dominican Republic to be with the applicant as: he immigrated to Puerto Rico at the age of about seven years old; he has a close relationship with his U.S. brothers and sister, as well as his daughter, who all live in Rhode Island; it would be difficult to support his daughter's educational pursuits and financial needs as well as to pay the expenses of travel to visit her and his siblings; and he would lose his job at the and he would have a difficult time obtaining a job in the Dominican Republic given its terrible economy.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to the Dominican Republic. The record demonstrates that he has continuously resided in the United States for over 25 years and maintains close relationships with his U.S. citizen family members. Additionally, the U.S. Department of State's current travel advisory states: "Foreign tourists are often considered attractive targets for criminal activity and you should maintain a low profile to avoid becoming a victim of violence or crime. In dealing with local police, you should be aware that the standard of professionalism might vary. Police attempts to solicit bribes have been reported, as have incidents of police using excessive force." *Travel Advisory, Dominican Republic*,

issued June 22, 2012. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if he were to relocate to the Dominican Republic.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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.