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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 07 2013 Office: HARTFORD FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated June 21, 2013. The matter is now before the AAO on motion. The motion will be granted, but the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of the Dominican Republic who is 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She 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 spouse and her children.

The field office director, Hartford, Connecticut, concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated August 13, 2012. In our decision on appeal, we found that the applicant had failed to demonstrate that her qualifying spouse would face extreme hardship upon separation from the applicant or upon relocation to the Dominican Republic. With regard to separation, we noted that the record lacked evidence to support the qualifying spouse's claim that he suffers from depression and anxiety, that emotional difficulties for the applicant's children due to separation from their mother would cause hardship for him, and that he would be unable to support the applicant's children on his own. We also noted that the applicant could take her children to the Dominican Republic, freeing the qualifying spouse of the stress of raising them on his own. Additionally, we emphasized that the qualifying spouse was aware of the applicant's potential removal at the time he married her. In relation to the claim that the qualifying spouse would face extreme hardship upon relocation to the Dominican Republic, we found that the qualifying spouse's concerns regarding a lower standard of living and inferior medical and educational services were common results of inadmissibility which do not rise to the level of extreme hardship. We also noted that the record lacked evidence to support the qualifying spouse's claim that he must assist his father at work and that he could not relocate due to his educational goals. Finally, we found that the evidence was insufficient to show that the applicant's youngest child, [redacted] would be unable to relocate due to asthma. Accordingly, we dismissed the applicant's appeal.

On motion, the applicant has submitted a letter from her eldest son's community college and a summary of a medical visit for her youngest son.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant is eligible to seek a waiver of inadmissibility under section 212(i) of the Act, which provides:

> (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.

Although the applicant has submitted new evidence in support of her application, it is insufficient to demonstrate that her qualifying spouse would face extreme hardship if the waiver were denied. The new evidence relates to the applicant's children, but they are not qualifying relatives for purposes of a waiver under section 212(i) of the Act; the applicant's spouse is the only qualifying relative. While hardship to the applicant's children can be considered to the extent that it would cause extreme hardship to the qualifying spouse, the evidence does not support such a finding in this case.

The first piece of new evidence the applicant has submitted is a July 15, 2013 letter from [redacted] confirming that her eldest son, [redacted] is a student there. The letter also states that [redacted] benefits from the support of his family and that his education might be negatively affected if the applicant were removed. However, there is no evidence that [redacted] attendance at community college or the difficulties he might face in the absence of his mother would create hardship for the qualifying spouse. In our decision on appeal, we noted that the qualifying spouse himself claimed that he could not relocate because doing so would interrupt his educational pursuits, but that there was no proof that he had ever attended the GED classes for which he had enrolled. Records relating to [redacted] education are not relevant to the education of the qualifying spouse.

The second piece of new evidence the applicant has submitted is a one-page summary of a doctor's visit for her younger son, [redacted] on May 31, 2013. She states that this document is intended to prove that [redacted] has asthma. We noted in our decision on appeal that there was no evidence of this medical condition, or to support the qualifying spouse's claim that [redacted] could not relocate due to asthma. While the newly submitted documentation does provide evidence of asthma, it does not show specifically what hardships [redacted] would experience. The document lists the medications [redacted] is taking: triamcinolone topical, albuterol, spacer, Claritin, Singulair, and Ventolin. Although the document does briefly mention certain symptoms, such as "cough, wheezing and trouble breathing", it does not state that [redacted] has been diagnosed with asthma or any other particular illness. Furthermore, the document does not indicate the severity of [redacted] symptoms, the effects of his medical condition on his daily life, or his need for ongoing medical care. There also is no evidence that the qualifying spouse is responsible for [redacted] medical care such that he would be unable to relocate due to [redacted] health conditions, nor is there

evidence that would not receive appropriate medical care in the Dominican Republic. As we noted in our decision on appeal, the U.S. Department of State indicates in its 2013 report, *Country Specific Information: Dominican Republic* that "adequate medical facilities can be found in large cities" in the Dominican Republic.

Even when considered in the aggregate, the evidence in the record fails to meet the applicant's burden of demonstrating that her qualifying spouse would face extreme hardship if the waiver application were denied. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The record still does not show that the qualifying spouse would suffer extreme hardship if separated from the applicant, as there is no evidence of his mental health conditions, his financial situation, or his responsibility for caring for the applicant's children. Similarly, the record lacks evidence to show that the qualifying spouse's educational, family, and work responsibilities in the United States would prevent him from relocating to the Dominican Republic. Therefore, the applicant has failed to meet her burden of establishing extreme hardship to a qualifying relative as required for a waiver 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 an 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, although we grant the motion to reopen, we affirm our previous decision and the appeal remains dismissed.

ORDER: The previous decision of the AAO is affirmed.