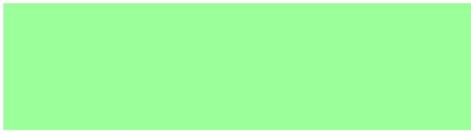




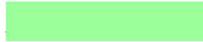
U.S. Citizenship  
and Immigration  
Services

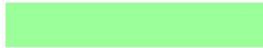
(b)(6)



DATE: SEP 13 2013

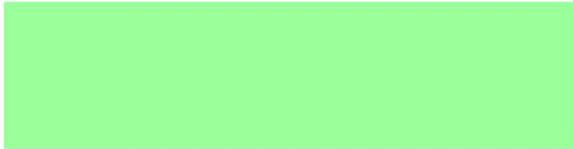
Office: NEWARK

FILE: 

IN RE: Applicant: 

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:



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 waiver application was denied by the Field Office Director, Newark, New Jersey. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, the applicant procured numerous benefits, including a B-2 nonimmigrant visa and subsequent entry to the United States, by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her U.S. citizen spouse.

The field office director found 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. *Decision of the Field Office Director*, dated December 7, 2012.

On appeal, counsel submits evidence establishing the applicant's divorce from [REDACTED], pronounced by the court for the judicial district of Santo Domingo, Dominican Republic, on July 11, 2007 and copies of the applicant's B nonimmigrant visas, issued to her in 2006 and 2008. The entire record was reviewed and considered in rendering this decision.

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

- (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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 (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...

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the

applicant misrepresented her marital status when she applied for a B Visa in January 2008. Specifically, the applicant claimed to be married, listing the name of [REDACTED] as her spouse, when in fact she was divorced. See *Form DS-156, Nonimmigrant Visa Application*, dated January 15, 2008. On appeal, counsel asserts that at the time the applicant applied for a nonimmigrant visa in January 2008, she did not know she was in fact divorced and it was not until August 2011, when she went to obtain a copy of the divorce, that she learned that her divorce had been finalized. Counsel thus contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Supra*.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The U.S. Department of State Foreign Affairs Manual further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

*DOS Foreign Affairs Manual*, § 41.31 N. 3.4.

By stating that she was married to [REDACTED] when applying for a nonimmigrant visa in January 2008, the applicant led the American Embassy in Santo Domingo to believe that she had close family ties, namely, a husband, in her home country. By failing to disclose that she was divorced, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa. The AAO notes that despite counsel's and the applicant's assertion that she thought she was still married to [REDACTED] at the time she applied for a nonimmigrant visa in January 2008, the record establishes that the divorce between the applicant and [REDACTED] was in fact finalized in July 2007, six months prior to the nonimmigrant visa application. No documentation has been provided to support her assertion that she was unaware of the date of her divorce. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to her nonimmigrant visa application at the American Embassy in Santo Domingo in January 2008.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant. 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-Morales*, 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998 (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 U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration, the applicant’s spouse explains that he loves his wife very much and needs her by his side and as a result of her inadmissibility, he has become very depressed. The applicant’s spouse further details that he will not be able to maintain two households, one in the United States and one in the Dominican Republic. *Affidavit in Support of Form I-601 Waiver from* [REDACTED], dated September 17, 2012.

To begin, with respect to the emotional hardship the applicant’s spouse references he would experience were the applicant to relocate abroad while he remained in the United States, the record does not establish that said hardship would be beyond the normal hardships associated when a spouse relocates abroad due to inadmissibility. As for the financial hardship referenced, no documentation has been provided on appeal establishing the applicant’s spouse’s income and expenses and assets and liabilities to establish that the applicant’s relocation would cause her husband financial hardship. The AAO notes that as of May 2012, the applicant has not held employment in the United States. See *Form G-325, Biographic Information*, dated May 14, 2012.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Alternatively, it has not been established that the applicant would be unable to obtain gainful employment abroad that would permit her to assist her husband financially should the need arise. Finally, the AAO notes that the applicant's spouse has a support network in the United States, including his parents and three siblings. It has not been established that the applicant's spouse's relatives would be unable to assist the applicant's spouse, emotionally and/or financially. It has thus not been established that the applicant's spouse would experience extreme hardship were he to remain in the United States while his spouse relocates abroad as a result of her inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse details that he was born and raised in the United States and has no ties or family connections to the Dominican Republic. The applicant's spouse outlines his extensive ties in the United States, including the presence of his parents, three siblings, a son, born in 2005, and a stepdaughter. The applicant's spouse further explains that his parents are getting older and their health is starting to fail and he wants to be close to them. Moreover, the applicant's spouse states that he has a stable job and insurance coverage through his union and were he to relocate abroad, he would not be able to obtain gainful employment and he would not be able to receive affordable and effective medical treatment. Finally, the applicant's spouse references the problematic country conditions in the Dominican Republic, including the high rates of crime and poverty. *Supra* at 2-4. The record reflects that the applicant's U.S. citizen spouse was born and raised in the United States. Were he to relocate abroad to reside with his wife as a result of her inadmissibility, he would have to leave his home, his children, his elderly parents, his siblings and their families, his community and his long-term gainful employment, since May 2004, with [REDACTED], and he would be concerned about his safety and well-being in the Dominican Republic as result of crime and poverty. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

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 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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship

than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rises to the level of "extreme" as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.