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)

DATE SEP 18 2014 OFFICE: NEW YORK, NY 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 Acting 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 has resided in the United States since December 9, 2010, when he was admitted pursuant to a nonimmigrant visa. He was found to be 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 that visa through fraud or misrepresentation. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 his U.S. citizen spouse and lawful permanent resident children.

The Acting District Director concluded that the applicant did not demonstrate that his qualifying relative would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of Acting District Director* dated October 26, 2013.

On appeal, counsel submits: a brief in support; medical records; and a statement from the applicant's spouse. In the brief, counsel contends that the Acting District Director minimized the spouse's psychological difficulties, which were severe enough to require intensive psychiatric treatment from May 1997 to September 1998.

The record includes, but is not limited to: the documents listed above; medical and financial documents; an additional statement from the applicant's spouse; a psychological evaluation; other applications and petitions; and photographs. 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) 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 [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.

In the present case, the record reflects that on a 2004 nonimmigrant visa application, the applicant indicated he was married, when in fact he was divorced. The applicant was granted a multiple-entry, 10-year B-1/B-2 visa, and he was last admitted to the United States pursuant to that visa on December 9, 2010. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured his nonimmigrant visa to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. citizen spouse.

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. 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 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 (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 spouse contends she would experience medical, psychological, and financial hardship if she were separated from the applicant. She claims she suffered a back injury at work in June 2010, and the applicant has been an important part of her recovery. Workers compensation records are submitted in support. A licensed psychologist states in an evaluation that the spouse, who was married twice before, benefited from the applicant's attentiveness during her recovery time, and that he continues to assist her by not allowing her to carry heavy objects and attends physical therapy.

The psychologist adds that when the spouse was injured, she became profoundly depressed, and during 1992 and 1997-1998, she had severe episodes of depression. Psychiatric records from 1997 to 1998 are submitted on appeal. The psychologist reports that the spouse stated she did not respond well to medication, and had severe side effects including fainting spells, agitation, and severe anxiety. In addition, the psychologist opines that the spouse worries about her children due to their medical conditions. The psychologist concludes that the spouse suffers from adjustment disorder with anxious mood, and has many symptoms of post-traumatic stress disorder ("PTSD"), as well as high levels of emotional distress and depression. The spouse contends that she depends on the applicant for everything, and their lives are completely intertwined. In a later statement, the spouse claims that the applicant has helped her with longstanding psychological issues, and that he has been much more effective help to her than the therapist she saw at the hospital in 1997 to 1998 or the medication she was prescribed. She adds that a year ago she was told to see a therapist to obtain medication, but she responded she did not like the effect medication had on her. The psychologist adds that if the applicant were not present in the United States and the spouse's worker's compensation benefits end, the spouse would be in a desperate financial situation.

Copies of worker's compensation and social security documents, some household bills, and paystubs are present in the record.

Through the psychological evaluation, the spouse states that she would not be able to relocate to the Dominican Republic because her entire life is in the United States. She adds that she has resided in the United States since 1974, and she cannot imagine moving anywhere else, especially since her children are going through difficult health conditions, and she would consequently need to access her children quickly in case of an emergency. The spouse claims that she feels safe, stable, and comfortable in the United States.

The applicant has submitted sufficient evidence to demonstrate that his spouse would experience extreme hardship upon separation. There is documentation in the record, including copies of household expenses and documentation of the spouse's income, to demonstrate that she would have financial difficulties without the applicant's financial assistance. Furthermore, the applicant has supplemented the record with evidence to show that his spouse, who is now 67 years old, underwent continuous treatment at a psychiatric hospital in the past, and that although she has not seen a therapist or obtained medication recently, she still experiences psychological difficulties such as depression and PTSD, due to family-related difficulties which previously occurred.

As such, there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, psychological, and other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the applicant has shown his spouse would suffer extreme hardship if the waiver application is denied and the applicant returns to the Dominican Republic without his spouse.

However, the applicant has submitted no evidence to support claims that his spouse would experience extreme hardship upon relocation to the Dominican Republic. For instance, although the spouse claims that her children are experiencing medical difficulties such as Crohn's disease and multiple sclerosis, there is no documentation, such as letters from health care providers, to substantiate these claims. In addition, as noted by the Acting District Director, the psychologist indicates that three of the spouse's four children, who are all over 38 years of age, live in Pennsylvania and Georgia, and not in New York where the spouse resides. As such, the record reflects that the four children are all adults, and they live some distance away from the spouse. In addition, the applicant has not submitted any evidence to support claims of repeated trips and continued communication the spouse has with her four adult children. In light of these facts, it is not clear from the record the degree of hardship the spouse would experience if she resided in the Dominican Republic while her children remained in the United States.

Moreover, assertions that the applicant and his spouse would be unable to find adequate employment in the Dominican Republic due to their ages is not supported by any evidence of record. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it

appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Relocation to the Dominican Republic would entail changes for the applicant's spouse. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the applicant has not demonstrated that his spouse would experience extreme hardship if the waiver application is denied and she relocates 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, the applicant has not shown 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 hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has failed to establish extreme hardship to his 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 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.