

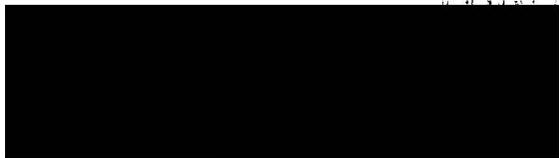
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U.S. Citizenship  
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Services

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FILE: [Redacted] Office: PHILADELPHIA Date: DEC 03 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Philadelphia, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). 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 41-year-old native and citizen of the Dominican Republic who was found 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). The record reflects that the applicant is married to [REDACTED] a lawful permanent resident of the United States. She is the beneficiary of an approved relative petition filed on her behalf by her spouse. The applicant presently seeks a waiver of inadmissibility in order to adjust her status to that of lawful permanent resident and remain in the United States with her family.

The district director determined that the applicant was inadmissible, and that she had failed to submit any evidence to indicate that the denial of a waiver would result in extreme hardship to her spouse. The waiver application was denied accordingly.

On appeal, the applicant, through counsel, maintains that her spouse would face extreme hardship as a result of her removal from the United States because, in relevant part, their son has Attention Deficit Hyperactivity Disorder (ADHD). The applicant submits a declaration sworn by her spouse, as well as documentation regarding her son's condition and educational placement.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on her fraudulent attempt to gain admission to the United States using another person's passport in 1988. The applicant does not dispute this finding. The AAO affirms the director's determination of inadmissibility. The question remains whether the applicant qualifies for a waiver.

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

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . ." (emphasis added).

A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the applicant's lawful permanent resident spouse. Hardship to the applicant's children, or to the applicant herself, is not a relevant consideration.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The applicant's spouse, \_\_\_\_\_ is a 37-year-old native of the Dominican Republic. He is a lawful permanent resident of the United States. He and the applicant were married in 1996 and have three children. One of the applicant's children suffers from ADHD. The only evidence of hardship in the record consists of a sworn declaration submitted by the applicant's spouse about the applicant's son's ADHD diagnosis and educational placement. There is no evidence in the record regarding extended family, community or property ties, either in the United States or the Dominican Republic. There is also no evidence of the family's financial circumstances, other than an employment letter from 2002 evidencing that the applicant's spouse is employed as a cook at an annual salary of \$14,560.

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 would face extreme hardship if the applicant is denied the waiver. The AAO notes that the applicant's son's ADHD, standing alone, does not provide a sufficient basis for finding that her spouse would face extreme hardship should the waiver be denied. The applicant's spouse maintains that he cannot care for his son due to his employment, but there is no evidence in the record indicating that the applicant is the one solely caring for her child, what specific care is required, or that there is no other relative who could care for the child's special needs. There is also no evidence of the applicant's spouse's (or the applicant's) current employment. There is also no evidence in the record regarding the

availability of adequate treatment for ADHD in the Dominican Republic. In sum, the record indicates that the applicant's spouse would face the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Although the AAO recognizes that separation from the applicant would cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO has carefully considered the emotional impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the potential separation from the applicant rises to the level of extreme.

The AAO further notes that the applicant's spouse does not indicate whether he would consider relocating to the Dominican Republic. In this regard, the AAO first notes that the statute does not require the applicant's spouse (or children) to relocate. The AAO further notes that a "lower standard of living . . . and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to demonstrate extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986).

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO therefore finds that the applicant failed to establish extreme hardship to her spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.