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U.S. Citizenship
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Date: DEC 15 2008

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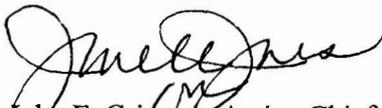
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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. Grisson, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 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 procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen, has a U.S. citizen child and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director concluded that the applicant had 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 Director*, at 3, dated September 30, 2006.

On appeal, counsel states that the director's decision was incorrect and that the applicant's spouse would suffer extreme hardship if the applicant were not allowed to remain in the country. *Form I-290B*, received October 30, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a mental health evaluation of the applicant's spouse and child, and country conditions information. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that in January 1999 the applicant was admitted to the United States with a fraudulent passport. As a result of this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

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

- (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 that:

- (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 alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully

¹ The record also reflects that the applicant was unlawfully present from January 1999 until his departure from the United States in February 2006. As such, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) for accruing over one year of unlawful presence and seeking admission within 10 years of his last departure. The applicant is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, which has the same "extreme" hardship standard as section 212(i). Therefore, this decision will also apply to the section 212(a)(9)(B)(v) waiver.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in the Dominican Republic or in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in the Dominican Republic. Counsel states that the Dominican Republic's economy is poor, it would be difficult for the applicant to find a job and the unemployment rate is 17 percent. *Brief in Support of Appeal*, at 3, dated November 9, 2006. Counsel states that the applicant's spouse would suffer extreme hardship due to the trauma of leaving the United States and adjusting to life in the Dominican Republic, she has the impossible choice of leaving her children in the United States without their parents or allowing them to face terrible conditions in the Dominican Republic, reports of violent crime against foreigners and locals is growing, she and her children are accustomed to police protection and other services, and there are police corruption and human rights abuses in the Dominican Republic. *Id.* at 3-4.

The applicant's spouse states:

It is so dangerous in the D.R., the violence, gangs, drugs, crime, poverty, corruption, and sometimes hurricane disasters. Medical care and educational opportunities are limited. [The applicant's son] is a healthy boy and so far I have a healthy pregnancy, but losing [the applicant] or losing our home in the U.S. would change all that. The radical disruption would be severely damaging.

Applicant's Spouse's Statement, at 2, dated June 28, 2006.

The applicant's spouse states in the mental health evaluation provided for her that her son was born in the United States, her job is here, she is very close to her three siblings and her mother, and her son and the child with whom she is pregnant will lose all of the good things here. *Mental Health Evaluation*, at 2, dated June 16, 2006. The record reflects that the applicant's spouse was born in the Dominican Republic and came to the United States in or around 1996. *Id.* at 2.

The applicant's mental health counselor states:

D.R.'s standard of living deteriorated further in the last decades, generating increased poverty, hopelessness, and growing social unrest...[The applicant's spouse] is extremely worried about the well-being of her husband...and of their son...D.R.'s education and health systems are in disarray...Notwithstanding their Latino heritage, [the applicant's son] is being raised with American cultural standards, from his dietary preferences and lifestyle to the language he is learning to use academically...Moving the family to D.R. also implies the dismantling of [the applicant's son's] language gains and social development, and his contact with uncles, aunts, and grandmother...Because of these uncertainties and distresses, [the applicant's spouse] has developed a number of symptoms typically associated with anxiety, stress and depression. To measure these symptoms more objectively, the Beck Anxiety and Burns Depression Inventories were presented to her...her total scores...confirmed a clinically significant anxious-depressive symptomatology...[the applicant's spouse and son] show clinically significant signs of anxiety, inner tension feelings, and mental worries, primarily associated with [the applicant's] future.

Id. at 3-5.

Some of the applicant's, mental health counselor's and counsel's claims related to country conditions are supported in the record. *Central Intelligence Agency World Fact Book, Dominican Republic*, last updated November 20, 2008, *Department of State Country Specific Information, Dominican Republic*, dated June 16, 2008 and *Department of State Country 2005 Country Reports on Human Rights Practices, Dominican Republic*, dated March 8, 2006. However, the record does not include substantiating evidence that the standard of living in the Dominican Republic has decreased or that there is growing social unrest as claimed by the applicant's mental health counselor. The record does not include evidence of the limited educational opportunities as claimed by the applicant's spouse. While the AAO notes that medical care in the Dominican Republic is limited outside Santo Domingo, the record fails to indicate that the applicant and his family would reside outside the capital if they relocated. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)).

The AAO notes that the psychological evaluation of the applicant's spouse is based on a single interview with her and, therefore, fails to reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional. Further, the mental health counselor does not offer a mental health diagnosis for the applicant's spouse, but concludes that she shows clinically significant signs of anxiety, inner tension feelings and mental worries associated with the applicant's future. The AAO also observes that beyond his reporting of numeric scores, the counselor has provided little explanation of the findings of the standardized tests he administered. As such, the evaluation offers little probative value.

Based on the record, the applicant has provided insufficient evidence to establish that his spouse will suffer extreme hardship as a result of relocating to the Dominican Republic.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse depends on the applicant physically, financially and emotionally; she depends on him to raise their son and unborn child; she will suffer indirectly due to her son's suffering; her pregnancy and the future of their unborn child may be seriously impacted; the Dominican Republic's economy is poor; and it would be difficult for the applicant to find a job and support the family; *Brief in Support of Appeal*, at 2-3.

The applicant's spouse states:

We are a close family. [The applicant] is never away from home...His daily physical presence in our home is vital to me as a wife and mother, and so vital to my son who needs his father. His physical presence is vital to my emotional health, especially now that I am pregnant. During their formative years, my children desperately need the daily presence of their father. I work as a home attendant and my monthly take-home pay is not enough to pay even just for our apartment rent...Emotionally, I am already suffering terribly. I cannot bear the thought of my children being forced to grow up without [the applicant] in their lives...Spiritually, I will suffer if [the applicant's] case is denied. We go to church and I want my children to learn my beliefs. We are spiritual people and it is important to us that we fulfill our God-given responsibilities as spouse and parents...Wondering...where I will have my baby and whether [the applicant] will be with me for the birth...I am experiencing a deep sense of tension and anxiety...I fear losing him, and to me such a feeling is like a death. My father died suddenly last year, and [the applicant] was right by my side throughout the grieving process.

Applicant's Spouse's Statement, at 1-2.

In regard to the applicant's spouse's claim of financial hardship, the record does not demonstrate that the applicant would be unable to obtain employment in the Dominican Republic or that he would be unable to financially support his spouse from abroad. While the record establishes that the overall unemployment rate for the Dominican Republic is 15.6 percent, it does not indicate unemployment statistics for the specific sectors of the Dominican economy in which the applicant would be seeking

employment. The record reflects that the applicant was previously employed as an accountant in the Dominican Republic. *Applicant's Form G-325*, undated.

The applicant's mental health counselor states:

D.R.'s standard of living deteriorated further in the last decades, generating increased poverty, hopelessness, and growing social unrest. A direct consequence of this pervasive economic malaise is the increased levels of street theft, armed robberies, burglaries, and gang-related assaults...[The applicant's spouse] is extremely worried about the well-being of her husband...[the applicant's spouse and son] show clinically significant signs of anxiety, inner tension feelings, and mental worries, primarily associated with [the applicant's] future.

Mental Health Evaluation, at 3,5.

As mentioned previously, the conclusions of the mental health counselor are based on a single interview with the applicant's spouse. Further, as he fails to offer a diagnosis for the applicant's spouse that would distinguish her anxiety and worries regarding the applicant from those experienced by other spouses separated as a result of removal, his evaluation offers little probative value for the purposes of determining extreme hardship.

The AAO finds the applicant to have provided insufficient evidence to establish that his spouse would suffer extreme hardship if she were to remain in the United States without him.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his spouse would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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.