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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: NEWARK, NJ Date: **JUL 18 2008**
RELATES)

IN RE: [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:
[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 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 attempted to procure and having procured admission into the United States by fraud or willful misrepresentation on May 29, 1995 and August 8, 1995, respectively. The applicant is married to a U.S. citizen and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant failed to demonstrate that her spouse would suffer extreme hardship as a result of her removal from the United States. The application was denied accordingly. *Decision of the Field Office Director*, dated July 1, 2007.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He states that the applicant would suffer extreme hardship as a result of being separated from his family in the United States; relocating to the Dominican Republic where he will not be able to find employment or receive adequate health care; and losing the assistance of the applicant in completing everyday tasks in the United States. *Counsel's Brief*, dated August 14, 2007.¹

The record indicates that on May 29, 1995, at John F. Kennedy airport in New York City, the applicant presented a photo-substituted Dominican passport and B-2 visitor's visa in an attempt to gain entry into the United States. The record also indicates that on August 8, 1995 she entered the United States at the Miami International Airport using a second photo-substituted Dominican passport and B-2 visitor's visa.

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

¹ The AAO acknowledges counsel's request to consolidate the appeals of the applicant's Form I-601 and Form I-485 denials. However, the AAO does not have jurisdiction over this type of I-485 filed under section 245 of the INA. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

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.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien experiences or her children would experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Dominican Republic and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

In support of establishing hardship counsel submits: a brief, a statement from the applicant's U.S. citizen spouse, two psychological evaluations and country conditions information for the Dominican Republic.

The first part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse submits a statement which states that the applicant had to write his statement because he is unable to do so. *Applicant's Statement*, dated May 27, 2005. The applicant's spouse states that the applicant helps him with many everyday activities such as paying bills, managing

money, taking care of their two children, and feeding the family. He states that he would be unable to do these activities without his wife. *Id.* A psychological evaluation prepared by [REDACTED] states that the applicant's spouse feels that life without the applicant would be catastrophic and that he would be depressed and would not be able to maintain the economic emotional stability of his children. *Psychological Evaluation*, undated. A second psychological evaluation completed by [REDACTED] states that the applicant's spouse suffers from striking language deficits and only has two years of education. *Psychological Evaluation*, dated July 26, 2007. She states that when questioned he was unable to state his name correctly or his daughter's names. She states that she administered subtests of the Spanish version of the Wechsler Adult Intelligence Scale and that the applicant's spouse scored in the 2nd percentile for vocabulary; in the 1st percentile for similarities; in the 5th percentile for information and the 9th percentile for comprehension. She states that normal scores would be in the 50th percentile. [REDACTED] also states that these scores indicate that he would score about 65-72 in an intelligence test, with the average being a score of 100. She concludes that based on these intelligence tests the applicant's spouse lacks the intellectual capability to adequately describe his feelings of hardship and are suggestive of borderline intellectual functioning (DSM-IV V62.89). [REDACTED] also administered the Spanish Beck Depression Inventory which showed that the applicant's spouse's symptoms met the criteria for moderate depression. [REDACTED] concludes that the applicant's spouse is vulnerable to severe depression. She also states that the applicant's spouse relies on the applicant for essential help and support in virtually all areas of daily living. She states that in her absence he could not perform these functions and could not manage his household. *Id.* The AAO finds that based on the findings of [REDACTED] the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant.

However, the applicant has not established the second part of the extreme hardship analysis, which requires the applicant to establish extreme hardship to her spouse in the event that he resides in the Dominican Republic. Counsel states that the applicant's spouse has been an auto mechanic for the last 20 years and he would not be able to find employment in the Dominican Republic because of high unemployment and the lack of high-technology mechanic's tools. *Counsel's Brief*, dated August 14, 2007. He states that relocation would cause the family to suffer a devastating financial hardship. *Id.* In support of these assertions, counsel submits a Congressional Research Service (CRS) Report for Congress, which states that the government of the Dominican Republic struggles to deal with crime rates and persistent electricity shortages. *CRS Report for Congress on the Dominican Republic*, updated March 8, 2005. The report states that in 2003 inflation had reached 42 percent while unemployment reached 16.5 percent. *Id.* The AAO notes that this report does not speak specifically to the applicant's spouse's situation. In the psychological evaluation by [REDACTED] he states that the applicant's spouse's mother still resides in the Dominican Republic and that he was employed as a mechanic in the Dominican Republic for 13 years. The record does not establish that the applicant's spouse would be unable to find employment as a mechanic upon relocation or that the applicant would be unable to obtain employment in the Dominican Republic and assist her spouse in supporting their family. Thus, the current record does not establish that the applicant's spouse would suffer extreme hardship as a result of relocating to the Dominican Republic.

U.S. court decisions have repeatedly 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.