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U.S. Citizenship
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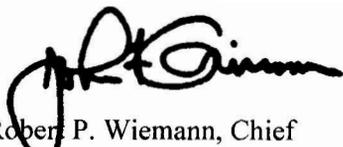
IN RE: Applicant:

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:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the district director for continued processing.

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 procured entry into the United States by fraud or willful misrepresentation; the record indicates that the applicant presented a passport and a visa belonging to another individual when seeking admission to the United States in April 1998. The applicant's spouse is a U.S. citizen. The applicant thus seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The district 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 21, 2004.

In support of the appeal, counsel for the applicant submits a brief, dated March 16, 2004, with referenced exhibits. In addition, on May 4, 2004, the AAO received a letter from counsel enclosing additional medical documentation with respect to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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...

Section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In

the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or the applicant's spouse's relatives, including her three children, cannot be considered, except as it may affect the applicant's spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

Counsel first contends that the applicant's U.S. citizen spouse will suffer extreme emotional and/or psychological hardship were the applicant removed from the United States. As stated by the applicant's spouse:

[redacted] [the applicant] is very supportive and encouraging and helps me cope with myself and my mental health problems.... [redacted] is my strength and he helps me keep my family together.... I want to stay married and this will not be possible if he is not allowed to stay here. Since [redacted] has come into my life, I feel a sense of security and the feeling of being loved, something I never had before. I suffer from long history of mental problems, and [redacted] help me cope.... Without him I don't know if I could do it by myself. Please don't take him away from me....

Letter from [redacted] dated June 10, 2001.

In support of the emotional hardship referenced by the applicant's spouse, counsel provides an evaluation from [redacted], M.S. Ed., Therapist and [redacted], M.D., Consulting Psychiatrist. As stated:

I am writing to document the treatment of [redacted] [the applicant's spouse] at Lehigh Valley Community Mental Health Centers, Inc. [redacted] has been a patient since September 3, 1998 and I have been her therapist since that time.

[redacted] is currently 42 years old and currently lives with her husband [the applicant] and her 18 year old daughter. Upon Psychiatric [sic] Evaluation, [redacted] was diagnosed with BiPolar Disorder, Depressed. [redacted] was referred to the clinic by Valley Housing and at the time of the initial intake assessment, [redacted] complained of mood swings, dominated by depressed mood, difficulty concentrating on what people are saying and low esteem. [redacted] had a history of abuse both as a child and as an adult.

Since [redacted] began treatment, she has struggled with a mood disorder and [redacted] has a severe learning disability which has had serious impact on her view of herself and her ability to

succeed in life. [REDACTED] had spent her young years in various foster homes and group homes because her mother was unable to care for her and her siblings.

[REDACTED] met her husband, [REDACTED] [sic] [the applicant] in Spring of 2000.... [REDACTED] marriage to [REDACTED] has provided her with a support system and provider [sic] her with a sense of stability she has never known before. Her husband has helped her to establish both meaning and purpose in her life and has improved her self worth and self esteem. [REDACTED] has reported in her therapy sessions that her husband truly cares for her and loves her for who she is. She also reports he is able to care for her, especially during those times when she is experiencing mood changes....

Prior to meeting [REDACTED], [REDACTED] struggled with relationship issues and has had difficulty communicating on her own behalf. [REDACTED] often feared not being understood or accepted. [REDACTED] feels she has been able to make a commitment to her husband and to the relationship.... [REDACTED] would have great difficulty adjusting to a new environment.... If [REDACTED] were to forced [sic] to choose between being with her husband and leaving the United States to do so, she could have a serious setback in all that she has worked so hard to maintain....

Letter from [REDACTED], M.S. Ed., Therapist, and [REDACTED], M.D., Consulting Psychiatrist, Lehigh Valley Community Mental Health Centers, Inc., dated April 6, 2004.

In addition to the above evaluation, to further substantiate the applicant's spouse's mental health condition, counsel has provided evidence that establishes that the applicant's spouse receives supplemental security income due to being disabled. *See Social Security Administration Supplemental Security Income Notice of Award*, dated September 2, 2003.

Based on the applicant's spouse's diagnosis and long-term treatment for Bipolar Disorder, and the documented need for her husband's presence in her life to ensure financial, emotional and psychological stability, the AAO concludes that the applicant's U.S. citizen spouse would experience extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criteria, counsel for the applicant asserts the following:

Carmen [the applicant's spouse] was born in Brooklyn, New York, she has never been in the Dominican Republic and has no family members residing there. She has difficulties speaking, reading, writing and comprehending Spanish....

When she was five years old, she moved to Bethlehem, PA, along with her three brothers and five sisters. She still lives in said city next to her supporting father.... She is in continuous contact with all her family, as they all live in the same area.

had three daughters before she met [the applicant]: and . is currently living next to the couple with her two daughters.... is a full time employee...and while she is working, takes care of her children. Due to this situation, has been extremely involved in her granddaughter's lives. She has taken care of them and been in contact with them almost on a daily basis since they were born....

is 18 years old and lives with and ... has an anxiety condition, for which she takes prescription medication. Due to these circumstances, Carmen believes she needs supervision and constantly worries about here [sic] whereabouts....

is 26 years old diagnosed to suffer from Profound Mental Retardation. She lives at St. Joseph's Center in Scranton, PA. is handicapped to the extend that she cannot care for herself. is aware that changing medical facilities will deteriorate s well being, considering that has resided in this center since the age of ten....

does not have family members or tides [sic] in the Dominican Republic....

Also, is involved in a local catholic church where she volunteers regularly.... She also seeks counsel with members of that organization. tries to attend religious services at least once a week, since she finds religious activities in that specific church a great support to deal with her depression.

The 2003 Human Rights Country Report on the Dominican Republic...establishes the following situation in said country: inflation of 43%, unemployment at 16.1 percent, income distribution highly skewed, poor human rights record, unlawful killings by members of the police and military, prison conditions from poor to harsh, infringement of privacy rights, excessive force by police, violence and discrimination against women, child prostitution, abuse of children, decimation....

According to the Consular Information Sheet, and , as American citizens, would have to keep a 'low profile' in the Dominican Republic.... It is clear that the actual country circumstances will prevent and her daughter to relocate and conduct their lives without fear of being subject of the incidents stated above. Also, and believe that such environment will aggravate her and Jasmarié's mental conditions....

Medical care in the Dominican Republic is limited and many medical facilities throughout the country do not have staff members who speak or understand English. Serious medical problems requiring hospitalization and/or medical evacuation to the U.S. can cost thousands of dollars or more. U.S. medical insurance is not valid outside the U.S. and U.S. Medicare and Medicaid programs do not provide payment for medical services outside the U.S.

If she [the applicant's spouse] was forced to relocate to continue her marriage, she would only have access to limited medical assistance in that country. Furthermore, treatment and counseling in said country would be burdened considering that she does not understand Spanish properly.

Moreover, since [REDACTED] receives government assistance, she does not have to cover for the treatment and counseling that she currently receives.... On the other hand, even if she was able to find proper assistance in the Dominican Republic, they could not afford it....

Brief in Support of Appeal, dated March 16, 2004.

The AAO notes the following regarding the problematic country conditions in the Dominican Republic:

Crime continues to be a problem throughout the Dominican Republic. Street crime and petty theft involving U.S. tourists does occur, and precautions should be taken to avoid becoming a target. While pick pocketing and mugging are the most common crimes against tourists, reports of violence against both foreigners and locals are growing. Criminals can be dangerous and visitors walking the streets should always be aware of their surroundings.

Many criminals have weapons and are likely to use them if they meet resistance. Be wary of strangers, especially those who seek you out at celebrations or nightspots. Traveling and moving about in a group is advisable. The dangers present in the Dominican Republic, even in resort areas, are similar to those of many major U.S. cities. Expensive jewelry attracts attention and could prompt a robbery attempt. Limiting the cash and credit cards carried on your person and storing valuables, wallet items, and passports in a safe place is recommended.

Burglaries of private residences continue to be reported as well as crimes of violence. Criminals may also misrepresent themselves in an effort to gain access to your residence or hotel room. In one 2005 homicide, a U.S. citizen was murdered by two men who posed as repairmen to gain access to the apartment. In another, the Dominican police arrested the building's actual maintenance man and an accomplice for the crime.

Medical care is limited, especially outside Santo Domingo, and the quality of care varies widely among facilities. There is an emergency 911 service within Santo Domingo, but its reliability is questionable. Outside the capital, emergency services range from extremely limited to nonexistent. Blood supplies at both public and private hospitals are often limited, and not all facilities have blood on hand even for emergencies. Many medical facilities throughout the country do not have staff members who speak or understand English.

The Department of State strongly urges Americans to consult with their medical insurance company prior to traveling abroad to confirm whether their policy applies overseas and whether it will cover emergency expenses such as a medical evacuation. Americans traveling in the Dominican Republic should be aware that Dominican hospitals often require payment at the time

of service and may take legal measures to prevent patients from departing the country prior to payment.

Country Specific Information-Dominican Republic, U.S. Department of State, dated June 16, 2008.

Based on the applicant's spouse's documented long-term mental health condition and the need for continued treatment by medical professionals familiar with her situation, the problematic country conditions in the Dominican Republic, cultural and language barriers, substandard health care, and the need for the continued presence and support of her children, father, siblings, grandchildren, and the church, the AAO finds that the applicant's spouse would suffer extreme hardship were she to relocate abroad with the applicant due to his inadmissibility.

The AAO finds that the applicant's U.S. citizen spouse would face extreme hardship if the applicant is required to return to the Dominican Republic. If she remains in the United States without the applicant, she is likely to face setbacks in her mental health situation, as attested to by the therapist and psychiatrist treating the applicant's spouse for over 10 years, and financial hardship. The AAO also finds that she would face extreme hardship if she were to accompany the applicant to the Dominican Republic. Leaving her three children, in light of the documented fact that one of her adult children was diagnosed with Profound Mental Retardation and has been institutionalized at one facility in Scranton, Pennsylvania since she was 10 years old, would cause extreme emotional and/or psychological hardship. Treatment of her own mental health condition would likely suffer, also, due to the language barrier and the difficulty in obtaining appropriate and affordable medical care in the Dominican Republic, as corroborated by the U.S. Department of State. The applicant's spouse would also be forced to leave behind an extended family network in the United States, including siblings, grandchildren and her father.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to return to the Dominican Republic, regardless of whether she accompanied him or remained in the United States, the applicant's spouse's family network in the United States, apparent lack of a criminal record, community ties, gainful employment, and the passage of over 10 years since the immigration violation. The unfavorable factors in this matter are the applicant's willful misrepresentation to an official of the United States Government in obtaining admission to the United States, and periods of unauthorized presence and employment.

While the AAO does not condone his actions, the AAO finds that the hardship imposed on the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility outweighs the unfavorable factor in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8

U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.