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U.S. Citizenship
and Immigration
Services

H2

[Redacted]

FILE:

[Redacted]

Office: MEXICO CITY (SANTO DOMINGO)

Date:

AUG 04 2009

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.

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 waiver application was denied by the Acting District Director, Mexico City, Mexico, 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 procured or attempted to procure entry into the United States by fraud. The applicant 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 her U.S. citizen spouse, [REDACTED]

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship for the following reasons: (1) the transition to life in the Dominican Republic would be extremely difficult after having immersed himself in the culture of the United States for over 26 years; (2) he would face great difficulty in continuing to provide financially for himself and his family in the Dominican Republic; (3) he would face the great emotional hardship of separation from his three adult children and seven grandchildren who reside close by him in the United States; and (4) if he remained in the United States he would continue to face the extreme psychological hardship of being separated from his wife/partner of 17 years and his three minor children who reside in the Dominican Republic. As corroborating evidence counsel furnished attestations from the applicant, the applicant's spouse's child, employment verification letters, Social Security statement, tax returns, photographs, and medical documentation. 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, 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 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.

Regarding the basis of the applicant's inadmissibility, the record reflects that the applicant declared on her waiver application that she is guilty of entering the United States with a fake passport. The Acting District Director stated in her decision that during the applicant's immigrant visa interview, the applicant admitted that she entered the United States by presenting a fraudulent passport and I-551 alien registration card. The director noted that the applicant remained unlawfully in the United States. On appeal, counsel provides a different set of facts surrounding the basis of the applicant's inadmissibility. Counsel asserts that in 1989 the applicant attempted to enter the United States with a fraudulent passport at Kennedy Airport in New York. Counsel states that the applicant was refused admission and detained by U.S. immigration officials in Bronx, New York. Counsel states that the applicant remained in custody for nine days until she withdrew her application for admission and returned to Santo Domingo. Counsel notes that the applicant was never admitted to the United States, and apart from this incident the applicant has never entered or attempted to enter the United States. The AAO finds that the factual discrepancies surrounding the applicant's fraud are not significant in these proceedings as there is no dispute that the applicant has sought admission to the United States by means of fraud. The applicant is 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 either having attempted to procure or procuring entry into the United States by fraud.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's spouse. 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, 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 pursuant to section 212(i) of the Act. 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship for the following reasons: (1) the transition to life in the Dominican Republic would be extremely difficult after having immersed himself in the culture of the United States for over 26 years; (2) he would face great difficulty in continuing to provide financially for himself and his family in the Dominican Republic; (3) he would face the great emotional hardship of separation from his three adult children and seven grandchildren who reside close by him in the United States; and (4) if he remained in the United States he would continue to face the extreme psychological hardship of being separated from his wife/partner of 17 years and his three minor children who reside in the Dominican Republic.

On July 29, 2009, the AAO received a request from counsel to expedite the adjudication of the waiver application. Counsel states that the applicant's minor children are now residing with her spouse in the United States. Counsel indicates that the applicant's spouse has been diagnosed with prostate cancer and is scheduled to start radiation treatment, rendering it difficult for him to care for the children. Counsel furnished a letter, dated June 26, 2009, from [REDACTED], Urology Consultants of the North Shore, Inc., stating that the applicant's spouse has a new diagnosis of prostate cancer, and will be undergoing external beam radiation therapy at the North Shore Cancer Center. [REDACTED] letter further states that this process will require the applicant's spouse to make daily visits to the cancer center.

The AAO notes that the applicant's prior assertions of extreme hardship due to his separation from his children are now voided by the new evidence in the record, which indicates that his children are residing with him in the United States. Counsel stated in his appeal brief that if he applicant's children moved to the United States, the applicant's spouse would suffer extreme hardship due to the difficulties of single parenting while continuing to provide for the financial needs of his family. It now appears that despite this claimed hardship, the applicant's children have moved to the United States to reside with their father. There is no indication in the record of how long the applicant's children have been residing in the United States, the child care arrangements that he has implemented, whether his adult children are providing any assistance, and whether his minor children could return to the Dominican Republic to reside with their mother while the applicant is undergoing radiation therapy. The AAO will recognize emotional hardship due to a qualifying family member's illness as a hardship factor. However, the record does not demonstrate the stage of the applicant's spouse's prostate cancer, his prognosis, and the schedule of his treatment plan. Nor does the record demonstrate the financial hardship that may have befallen the applicant's spouse due to his diagnosis with prostate cancer. It is unclear whether, and to what extent, his treatment is covered by his health insurance, or how it has impacted his employment or finances. Further, the record does not discuss whether the applicant's spouse would face any type of hardship if he sought medical treatment for prostate cancer in the Dominican Republic. Given these numerous

deficiencies in the record, the AAO cannot conclude that the applicant's spouse's medical condition contributes to a finding of extreme hardship.

As stated above, counsel has not presented any new hardship factors based upon the changed circumstances in the applicant's case. However, for the purpose of fully addressing all of the hardship factors presented in this case, the AAO will consider the hardship factors previously presented by counsel. On appeal, counsel furnished an affidavit from the applicant's spouse, dated September 16, 2008. The applicant's spouse notes in his affidavit that he first came to the United States in 1982 when he was 33 years old. He states that he has three adult children and seven grandchildren who reside within five miles of his residence. He states that he became involved with the applicant when he was visiting the Dominican Republic in 1990. He indicates that he has since maintained a relationship with the applicant while she resides in the Dominican Republic. He notes that they have three minor children together, ages 16 years, 9 years and 4 years. He states that he visited his wife and children in Santo Domingo once a year and has provided financially for them. He states that as his children get older it gets harder to be a father figure for them, and it becomes more painful to be without them and the applicant. He states that it would be hard for him to return to Santo Domingo. He states that he has two jobs working as a prep cook and earns a decent living. He states that he visits his older children and grandchildren on a weekly basis. He states that it would be emotionally very difficult for him to be separated from his adult children and grandchildren. He states that he would find it extremely hard to reintegrate into life in Santo Domingo and meet his family's needs there. He notes that he sends the applicant and his minor children \$500 per month for basic living expenses, and he sends additional amounts to cover the cost of their children's education and the applicant's medical school tuition and healthcare. He states that his youngest son has severe asthma, and although he has employer sponsored health insurance, his children and spouse do not have health insurance in the Dominican Republic.¹ He notes that he must pay for his son's treatment and medications out of pocket. He states that his son's first hospitalization cost him \$1,500 and his second hospitalization cost him \$570, and the medicine for each asthma attack costs from \$45 to \$60.

The AAO will consider financial hardship as a factor in establishing extreme hardship. However, in his particular case, the applicant's spouse's financial hardship is not demonstrated by the record. The applicant's spouse's 2007 tax return reflects that he earned \$38,560 in 2007. The AAO notes that the applicant's spouse's average annual income of \$38,560 is above the U.S. Department of Health and Human Services 2007 federal measure of poverty. The U.S. Department of Health and Human Service's 2007 federal poverty guidelines reflect that an annual income of less than \$24,130 for a family of five constitutes poverty, thus allowing for financial eligibility for certain federal program purposes.² He states in his affidavit that he sends \$500 per month to the applicant and their

¹ The AAO notes that the record does not contain any probative documentation related to the applicant's son's medical treatment for asthma. Counsel furnished a medical letter from Centro Medico Panamericano, which is written in Spanish without an accompanying English translation. Without certified translations of the document, the AAO cannot determine whether the evidence supports the claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in these proceedings.

² <http://aspe.hhs.gov/POVERTY/07poverty.shtml>

children to cover living expenses. However, he has not provided any documentation of his own living expenses and liabilities. Nor has he clearly defined the additional monetary sums he sends to the applicant for her medical school tuition and other expenses. Without a clear picture of the applicant's spouse's total monthly expenses, the AAO cannot determine whether he is suffering from financial hardship due to the applicant's inadmissibility. Further, it should be noted that the applicant's children are now residing in the United States. The applicant has not indicated how their residence in the United States has altered his expenses. As such, the AAO cannot assess the applicant's current financial circumstances. Moreover, the applicant's spouse has not indicated whether the applicant would continue with her medical studies in the United States. If the applicant intends to continue with her medical studies in the United States, her spouse would likely continue to financially support her, rendering moot any financial relief that would result in her admission to the United States. Finally, the applicant's spouse has not established that he would be unable to find commensurate employment in the Dominican Republic. The AAO notes that the applicant's spouse is a native of the Dominican Republic, and according to his affidavit, he has visited the applicant and his minor children in the country on numerous occasions. Therefore, he should have little difficulty adjusting to the language, culture and residence in the Dominican Republic. Based on the foregoing, the AAO does not find that the applicant's spouse's claims of financial hardship are demonstrated by the record.

The applicant's spouse states in his affidavit that it is painful for him to remain in the United States without the applicant. He states further that it would be emotionally very difficult for him to be separated from his adult children and grandchildren if he returned to the Dominican Republic. The AAO acknowledges that the applicant's spouse will experience emotional hardship in either scenario-if he remains in the United States without his wife or if he leaves his adult children and grandchildren and moves to the Dominican Republic. However, the AAO finds that the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission 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.