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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

115

Date: **APR 28 2011** Office: NEWARK, NJ (MOUNT LAUREL) FILE: [REDACTED]

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 PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
for Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District 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 obtained admission into the United States on or about September 22, 2001 through the use of an altered passport belonging to his cousin. He 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 admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The District Director concluded that the applicant failed to establish that his qualifying relative would experience extreme hardship, and denied the application accordingly. *See Decision of the Director* dated December 6, 2008.

On appeal, the applicant's attorney asserted that the applicant's qualifying relative, his wife, would suffer extreme hardship as a result of her separation from the applicant. The applicant's attorney contends that the qualifying spouse will suffer from financial, psychological and medical hardships as a result of the applicant's inadmissibility. In addition, the applicant's attorney asserts that the applicant's spouse has family ties to the United States, including her children, parents and siblings. The applicant's attorney also states that the applicant's spouse would face financial issues if she relocated to the Dominican Republic due to the difficulty in finding suitable employment. Moreover, the applicant's attorney indicates that the qualifying spouse and her children have health problems requiring medical treatment, and that the Dominican Republic does not have comparable medical facilities.

The record contains the following documentation, including, but not limited to, an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), briefs written on behalf of the applicant, affidavits from the qualifying spouse, birth certificates for the applicant and qualifying spouse's children, psychiatric evaluations, copies of the qualifying spouse's prescriptions, tax returns, a Department of State Country Report on Human Rights Practices for the Dominican Republic (2007), a doctor's note on prescription paper regarding the qualifying spouse, a letter from a health center regarding the qualifying spouse, a doctor's letter regarding the qualifying spouse's child, Biographic Information (Form G-325A), identification documents for the qualifying spouse, bank statements and other accompanying documentation submitted in conjunction with the Application to Adjust Status (Form I-485). 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:

- (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:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to the Philippines, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant’s qualifying relative is his spouse, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse’s hardship includes briefs written on behalf of the applicant, affidavits from the qualifying spouse, birth certificates for the applicant and qualifying spouse’s children, psychiatric evaluations, copies of the qualifying spouse’s prescriptions, tax returns, a Department of State Country Report on Human Rights Practices for the Dominican Republic for 2007, a doctor’s note on prescription paper regarding the qualifying spouse, a letter from a health center regarding the qualifying spouse, a doctor’s letter regarding the qualifying spouse’s child, Form G-325A, bank statements and other accompanying documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney asserted that the qualifying spouse will suffer from financial, psychological and medical hardships as a result of the applicant's inadmissibility. In addition, the applicant's attorney asserts that the applicant's spouse has family ties to the United States, including her children, parents and siblings. The applicant's attorney also states that the applicant's spouse would face financial issues if she relocated to the Dominican Republic due to the difficulty in finding suitable employment. Moreover, the applicant's attorney indicates that the qualifying spouse and her children have health problems requiring medical treatment, and that the Dominican Republic does not have comparable medical facilities.

The applicant's attorney asserts that the applicant's wife would suffer from medical and psychological hardships as a result of her separation from the applicant. With respect to the applicant's medical hardships, the record contains copies of the qualifying spouse's prescriptions (presumably for her asthma) and a form letter from the Osborn Family Health Center indicating that she is "currently being treated" and "requires heating/cooling assistance because he/she suffers from the following medical conditions asthma." Further, the psychiatric evaluation describes her illness as "serious" and that when "complicated with bronchitis or pneumonia" can "literally incapacitate her health and threaten her life." With regard to the potential emotional and psychological issues that the qualifying spouse may encounter, the record contains an affidavit from the qualifying spouse, two psychological assessments, a handwritten note on prescription paper and the qualifying spouse's prescriptions. In the qualifying spouse's affidavit, she states that separation from the applicant would have a "devastating effect" on her marriage and life. The psychiatric evaluation states that the qualifying spouse began taking medication for anxiety and depression after the birth of her son and was "relatively stable," prior to the notification of the applicant's waiver denial. Since then, the qualifying spouse has been "constantly obsessing and worrying about the future of her children" and has "active suicidal" thoughts.

Moreover, the applicant's attorney indicates that the applicant's spouse would suffer financially if the applicant returns to the Dominican Republic. The applicant's attorney, the qualifying spouse and the psychiatrist assert that the applicant's departure will have a negative financial impact on the qualifying spouse. The record contains tax returns, earnings statements and bank statements, demonstrating that the loss of any financial contributions by the applicant will pose a financial hardship for the qualifying spouse. When considered in the aggregate, the documentation provided regarding the qualifying spouse's medical, emotional and financial hardships demonstrate that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

However, the AAO finds that the applicant has not met his burden of showing that his qualifying spouse would suffer extreme hardship if she relocated to the Dominican Republic. If the applicant's wife relocated to the Dominican Republic, she would no longer experience the emotional and psychological hardships associated with separation from one's spouse. The applicant has not addressed whether he has family ties to the Dominican Republic, other than his three children born in the Dominican Republic that he referenced in the Form I-485, and the AAO is thus unable to ascertain whether and to what extent the applicant would receive assistance from family members for both himself and his spouse. The applicant's attorney and the qualifying

spouse have indicated that the qualifying spouse's children, parents and siblings live in the United States. However, there was no evidence indicating that the qualifying spouse's family members live in the United States or documentation regarding her relationship with her family to indicate the extent of the hardship she would face. Moreover, the applicant's attorney and the qualifying spouse assert that the qualifying spouse and her children will face incomparable medical facilities and educational systems, and that it will be difficult for the qualifying spouse to find suitable employment. Although the record contains the country report for the Dominican Republic, there was no evidence submitted that specifically substantiates the assertions made by counsel and the qualifying spouse. As such, the applicant has not met his burden in demonstrating that his qualifying spouse will suffer an extreme hardship in the event that she relocates to the Dominican Republic.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.