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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**



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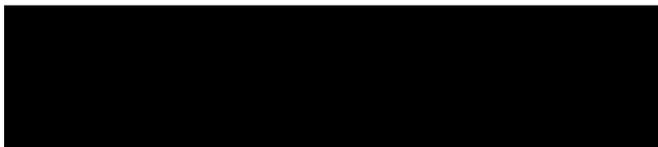
Date: DEC 01 2011 Office: NEWARK, NJ

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director found that the applicant failed to respond to a notice of intent to deny the waiver application and denied the waiver application accordingly. *Decision of the District Director*, dated March 12, 2009.

On appeal, counsel contends that the applicant did, indeed, respond to the notice of intent to deny. Counsel contends the applicant established the requisite hardship, particularly considering the applicant's wife recently gave birth to a stillborn baby.

The record contains, *inter alia*: a letter from the applicant; a letter and an affidavit from the applicant's wife, [REDACTED] copies of [REDACTED] medical records; copies of bills, tax records, and other financial documentation; a letter from the applicant's employer; a letter from [REDACTED] employer; a copy of the couple's daughter's report card; copies of photographs of the applicant and his family; a copy of the U.S. Department of State's Consular Information Sheet for the Dominican Republic and other background materials; a copy of the couple's deed for their house; documentation the applicant purchased a business; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the

refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes, that on November 15, 2000, he attempted to enter the United States by presenting a fraudulent passport and visa. *Attachment to I601 of* [REDACTED] [REDACTED] dated August 31, 2006; *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated November 15, 2000. The applicant was removed from the United States the next day. The applicant subsequently reentered the United States on August 24, 2002, and March 24, 2004, with a V-1 visa. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant’s wife, [REDACTED] states that she had a short and difficult childhood and that when she was sixteen years old, she moved in with a thirty-eight year old man who treated her badly. She states they had a child together, [REDACTED]. After her divorce, [REDACTED] states that she and the applicant had two daughters together. She contends the applicant gives her love, stability, and peace and that he is a wonderful father to their children. According to [REDACTED], their daughter, [REDACTED] has a learning disability and her husband helps her with schoolwork. In addition, [REDACTED] states that [REDACTED] lives with his father and spends the weekends with her and the applicant. She states that she would be happy to bring [REDACTED] to live with her, but is waiting to see if her husband’s waiver application will be approved because she would not even think of having [REDACTED] live with her without a father figure. Furthermore, [REDACTED] states that her husband bought a business for them to have and run together and that he contributes 80% of their household expenses. She contends that without him, she could not afford to pay for their house, bills, or food for the children. [REDACTED] contends she will “go crazy” if her husband’s waiver application were denied and that she is taking medicines to control herself. *Letter from [REDACTED] dated February 4, 2009; Affidavit from [REDACTED] dated August 31, 2006.*

The AAO finds that if [REDACTED] were to remain in the United States without the applicant, she would suffer extreme hardship. The record shows that the couple has three children between the ages of nine and fourteen years old, and that [REDACTED] has a nineteen year old son from her previous marriage. According to tax documents in the record, in 2005, the applicant earned \$15,360 and [REDACTED] earned \$17,729. *2005 Wage and Tax Statements (Form W-2); see also Letter from [REDACTED] dated June 25, 2006* (stating [REDACTED] has worked in the [REDACTED] for the past four years and earns \$1,500). If [REDACTED] were to remain in the United States without the applicant, she would be solely responsible for financially supporting their three children.

The 2005 Poverty Guidelines requirement for a family unit of four was \$19,350, and 125% of that figure, which is a sponsor requirement as stated in the affidavit of support, was \$24,188, significantly more than [REDACTED] income. The AAO therefore finds that without her husband's financial assistance, [REDACTED] would suffer extreme financial hardship. In addition, the record shows that the applicant incorporated [REDACTED] and purchased a business, [REDACTED] in December 2005. According to [REDACTED], she and her husband run the business together. Denying the applicant's waiver application would significantly affect the couple's business. Moreover, a copy of [REDACTED] report card in the record indicates that she is at below grade level and has poor test scores. According to [REDACTED], she does "not know where to start, and what to do" to help [REDACTED] and the applicant "has decided . . . his project [is] to help her as much as possible." *Affidavit from [REDACTED]* dated August 31, 2006. Furthermore, as counsel contends, the record contains documentation that [REDACTED] recently delivered a stillbirth baby boy and that she suffered complications including "post partum hemorrhage, coagulopathy and GBS sepsis [and was] treated in intensive care unit [where she] required [a] massive transfusion." She also experienced complications "by pulmonary edema requiring diuresis." Copies of her medical records indicate her pertinent medical history includes, but is not limited to: aneurysm, anterior choroidal artery infarction, asthma, autoimmune disorder, a history of cervical cancer, cystic fibrosis, diabetes mellitus, and epilepsy. *Progress Notes*, dated September 30, 2010. Considering these unique factors cumulatively, the AAO finds that the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Nonetheless, neither the applicant nor [REDACTED] discuss the possibility of [REDACTED] moving back to Dominican Republic to avoid the hardship of separation and they do not address whether such a move would represent a hardship to her. The record shows that [REDACTED] is currently thirty-eight years old, was born in Dominican Republic, and married the applicant in Dominican Republic. Although the record contains copies of [REDACTED] medical records indicating she has numerous health problems, there is no letter in plain language from any health care professional addressing the prognosis, treatment, or severity of her conditions and the applicant does not contend that [REDACTED] could not receive adequate medical treatment in Dominican Republic. In addition, the applicant does not address whether [REDACTED] would move with the children to Dominican Republic or whether any hardship the children may experience upon relocation would cause her extreme hardship.

Although the applicant has demonstrated that the qualifying relative, his wife, would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*,

see also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.