

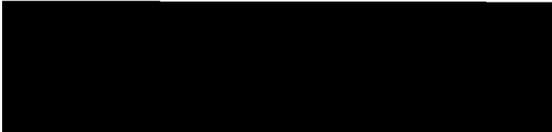
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

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H5

DATE: DEC 02 2011 Office: SANTO DOMINGO, DOMINICAN REPUBLIC FILE: [REDACTED]

IN RE: Applicant: [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:

SELF-REPRESENTED

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Dominican Republic who misrepresented her relationship status in an attempt to obtain an immigrant visa in 2003. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She is the daughter of a Lawful Permanent Resident (LPR). The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her LPR mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) August 7, 2009.

On appeal, the applicant's spouse asserts that her mother suffers from several medical conditions and that her mother will suffer physical hardship due to her inadmissibility. *Attachment, Form I-290B*, received September 3, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) 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 chapter is inadmissible.

The record indicates that the applicant was the beneficiary of a Petition for Alien Fiance (Form I-129F) filed on June 6, 2003, and approved June 24, 2003. Based on the approved petition, the applicant applied for a K-1 nonimmigrant visa on September 29, 2003. The petitioner also appeared for an interview at that time. The petitioner made a sworn statement, included in the record, in which he states that he was only trying to assist the applicant in obtaining an immigrant visa, and that he charged the applicant \$2,000.00. On appeal, the applicant indicates that the relationship was legitimate but that she terminated the relationship when she discovered he was unfaithful to her. However, other than the applicant's statement, the record does not include any evidence that the relationship was legitimate. Pursuant to section 291 of the Act, 8 U.S.C. section 1361, the burden of proof is on the applicant to establish that she is not inadmissible under any provision of the Act. Based on the evidence in the record, the AAO finds that the applicant made a material misrepresentation in seeking to procure a K-1 nonimmigrant visa and is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a statement from the applicant; a statement from the applicant's mother; a statement from [REDACTED] [REDACTED] [REDACTED] dated May 22, 2005; a utility termination notice issued to a Bronx, New York,

address; a letter to the applicant's mother's law firm pertaining to injuries she sustained to her knee during a fall in her building; medical records pertaining to a knee injury sustained by the applicant's mother; birth certificates for the applicant's daughters, bank statements, tax returns, school records and pay stubs for the applicant's husband.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 a VAWA self-petitioner, 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. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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).

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.

The applicant has submitted a statement asserting that her mother has several medical conditions and that her mother needs her in the United States to care for her. *Statement of the Applicant*, received September 3, 2009. She explains that her mother suffered a knee injury in 2001, that she also suffers from esophageal reflux, palpitations, tietz disease and headaches, and that she has been perscribed Tylenol with Codeine, Naprosyn and Prilosec for her conditions. The applicant's mother has submitted a letter stating that she is very sick, needs the applicant to care for physically and will have knee surgery soon and will need her daughter to help her rehabilitate. *Statement of the Applicant's Mother*, dated April 30, 2009.

The record contains medical records and other documentation corroborating that the applicant's mother suffered a knee injury in 2001. There is also a letter in the record which provides a history of the applicant's mother's knee injury and describes her as "disabled," indicating that she suffers from pain when climbing up and down stairs. The medical records indicate the applicant's mother may be scheduled for an arthroscopy in order to determine the source of her pain.

The record also contains a hand-written letter from [REDACTED] stating the applicant's mother has esophageal reflux, palpitations, tietz disease, headaches and breast cysts. However, the statement from [REDACTED] does not confirm what perscriptions she has been given to control her condition or provide any prognosis as to the treatment of her conditions. In addition, the statement does not detail the impact on her ability to function on a daily basis or what physical assistance, if any, that she might need due to her conditions. Based on this evidence the AAO can determine that the applicant's mother is experiencing some medical hardship. However, the AAO notes that the applicant indicated in her statement that her mother resides with a 17 year old daughter and has other daughters residing in the United States. While the applicant has asserted that the 17 year old sister that lives with her mother attends school, the record does not establish that the needs of the applicant's mother would exceed the ability of her sister to provide any necessary physical assistance. In addition, as noted above, while the applicant's mother may need arthroscopic surgery, the evidence submitted does not the degree of assistance that the applicant's mother would require. Nor does the record establish that the applicant's mother would be unable to receive any needed support in the applicant's absence.

The record contains a statement from [REDACTED] a power company, addressed to the applicant's mother. It states that the account is still under a termination notice. This document is not sufficient to establish any financial hardship to the applicant's mother. There is no evidence regarding the applicant's mother's income, financial obligations or current economic status. Without further evidence to distinguish any impact on the applicant's mother due to economic hardship the AAO does not find financial hardship to constitute a significant hardship factor.

The record does not provide any other evidenece of hardship impact to the applicant's mother. While there is sufficient evidence to indicate that she has some medical issues, and may be experiencing physical hardships, there is insufficient evidence to establish that any physical impact on the applicant's mother, even when considered in the aggregate with other impacts, rises to the level of extreme hardship.

With regard to hardship upon relocation, the applicant states that her mother's medical problems "make her life quality poor and are the principal reasons that she cannot come to live in the Dominican Republic." *Statement of the Applicant*, dated August 30, 2009. An examination of the record does not reveal any documentation that the applicant's mother would be unable to receive medical care in the Dominican Republic. In addition, as noted above, there is insufficient evidence to establish the nature and severity of the applicant's mother's condition, and as such, the record fails to establish that she would be unable to relocate due to medical problems. Based on this, the AAO

does not find the record to support that the applicant's mother would experience any uncommon hardships upon relocation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's mother faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's mother may experience some physical inconvenience due to her medical conditions and will not be able to rely on the applicant for any financial assistance. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *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.