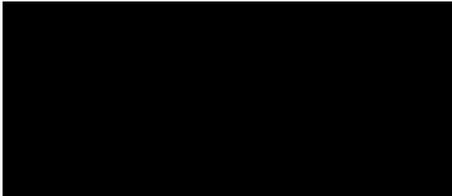


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



PUBLIC COPY



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FILE:

Office: MEXICO CITY (SANTO DOMINGO)

Date:

JAN 10 2011

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of 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 Acting District Director, Mexico City. 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 the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A), as an alien previously removed; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation; and section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as an alien unlawfully present after a previous immigration violation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The acting district director found that the applicant failed to establish extreme hardship to her spouse. In addition, the acting district director found that the applicant's waiver application should be denied as a matter of discretion because her disregard and disobedience of the laws of the United States outweigh any positive factors in her case. The acting district director denied the waiver application accordingly. *Decision of the Acting District Director*, dated August 4, 2008.

On appeal, counsel contends that the applicant has never been removed from the United States and, therefore, the acting district director erred in finding that the applicant is inadmissible under section 212(a)(9)(A) of the Act as an alien previously removed. Counsel also contends the applicant established the requisite hardship. Specifically, counsel contends that the applicant's husband, [REDACTED] would suffer extreme financial hardship if his wife's waiver application were denied, that the Dominican Republic is a low income, developing country with corruption problems, that he has four U.S. citizen children, and that he is suffering from major depressive disorder.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on November 10, 2001; two affidavits and a letter from [REDACTED] two letters from the applicant; a psychological evaluation of [REDACTED] letter from [REDACTED] s physician and copies of medical records; two letters from the applicant's physician; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for the Dominican Republic and other background materials; a letter from [REDACTED] employer; a copy of [REDACTED] s taxes and other financial documents; letters of support, including from the couple's children and church; photos of the applicant and her 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)(9)(B) of the Act provides, in pertinent part:

Any alien (other than an alien lawfully admitted for permanent residence) who -

.....
(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....
(v) Waiver.— The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 in 1997, she attempted to enter the United States by presenting fraudulent documents. The applicant was detected and not permitted to board the plane. *Letter from* [REDACTED], dated September 24, 2008. In addition, the record shows, and the applicant does not contest, that she entered the United States in 1998 using a fraudulent passport in the name of "Iris [REDACTED]" and remained until her departure in November 2007. 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 willful misrepresentation of a material fact in order to

procure an immigration benefit. The applicant is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of one year or more.

The acting district director also found that the applicant is inadmissible under section 212(a)(9)(A) of the Act as an alien previously removed. Specifically, the acting district director found that Service records show that the applicant arrived at John F. Kennedy airport on September 23, 2002, with fraudulent documents. The acting district director found that the applicant was expeditiously removed from the United States on the same day. In addition, the acting district director also found that the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as an alien unlawfully present after a previous immigration violation.

The applicant contends she never attempted to enter the United States in 2002 and that she was never deported. Rather, the applicant contends she was living in the United States at that time and did not leave until 2007. The applicant claims the immigration officer must be referring to someone else and agrees to undergo biometric tests to prove it. *Letter from [REDACTED]*. In support of her claim, the applicant has submitted two receipts from medical appointments, dated August 28, 2002, and September 4, 2002, showing she was in the United States around the time of her purported attempted entry on September 23, 2002. In addition, the applicant has submitted a letter from a neighbor who lives across the street from the applicant, affirming that she "would see [the applicant] everyday and she never left the United States until November 2007." *Letter from [REDACTED]*, dated September 10, 2008.

After a careful review of the record, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act as an alien previously removed. A review of the sworn statement, dated September 23, 2002, taken in conjunction with the applicant's purported expedited removal, indicate that the person who was removed on that date was not the applicant. Rather, the individual who was expeditiously removed was named [REDACTED] who was married to a Cuban refugee named Francisco [REDACTED]. The record contains the marriage certificate of [REDACTED] indicating they were married on December 14, 2001. In contrast, the record indicates the applicant's full name is [REDACTED] and contains a marriage certificate indicating she married [REDACTED], who was born in the Dominican Republic, on November 10, 2001. Further, passport photos for the individual apprehended in September 2002 and photos of the applicant reflect two different people. Considering all of the evidence, the AAO finds that the applicant was not previously removed from the United States. Therefore, the applicant is not inadmissible under section 212(a)(9)(A) of the Act.

For the same reasons, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), as an alien unlawfully present after a previous immigration violation. Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - Any alien who -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

There is no evidence in the record showing that the applicant reentered or attempted to reenter the United States without inspection after having been unlawfully present in the United States for more than one year or ordered removed. Therefore, the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 Mexico, 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 an applicant, 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.

In this case, the applicant’s husband, [REDACTED] states that he and his wife have two U.S. citizen sons who are in college. He contends that he sends his sons a monthly allowance and that they need both of their parents to provide emotional support for them. According to [REDACTED] if his wife’s waiver

application were denied, his sons would have to drop out of college. In addition, [REDACTED] states that he is under constant treatment for his spine and that this back condition stops him from working a couple of times a year. He states he needs his wife's assistance during these times. Furthermore, [REDACTED] contends that the separation from his wife, and the thoughts of relocating to the Dominican Republic, have made him suffer from Major Depressive Disorder. He states that if his wife's waiver application were denied, he will move to the Dominican Republic to be with her. He states that she recently had a stroke and was diagnosed with Parkinson disease, for which she is receiving the proper treatment. [REDACTED] contends that if he moves to be with his wife, he will be unable to obtain a job because he is 52 years old and, as a result, he will not be able to support his family. *Affidavits* [REDACTED] [REDACTED] dated January 11, 2009, and September 25, 2008; *Letter from* [REDACTED] dated May 5, 2008; *see also Letter from* [REDACTED] dated May 12, 2008 (claiming her husband suffers from a hernia and is in a lot of pain).

A psychological evaluation of [REDACTED] states that he suffers from Major Depressive Disorder and that if he continues to experience additional life stressors, he is at high risk of developing serious illnesses. According to the psychologist, [REDACTED] reported symptoms including headaches, dizziness, excessive fears, and eating and sleeping problems. In addition, the psychologist states that [REDACTED] previous back pain has been exacerbated, he has developed high cholesterol, and he suffered a heart attack in February 2008 due to the stress of being separated from his wife. Furthermore, the psychologist states that if [REDACTED] relocated to the Dominican Republic to be with his wife, "his mental and physical well-being and financial stability would be irreparably harmed." *Affidavit of* [REDACTED] dated September 25, 2008.

A letter from [REDACTED] physician states that [REDACTED] complained of several symptoms, including severe generalized body pains, headaches associated with dizziness, vision disturbance, mouth lesions, back pain, and chest pain, as a result of a beating. *Letter from* [REDACTED] dated August 20, 2007. A letter from the applicant's physician in the Dominican Republic states that she suffered a stroke in February 2008 that caused the left side of her body to be rigid. *Medical Certificate from* [REDACTED], dated September 25, 2008.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the Board of Immigration Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *See*

also Hassan v. INS, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Regarding [REDACTED] depression, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on two interviews the psychologist conducted with [REDACTED] on September 10 and 22, 2008, totaling approximately 160 minutes. A [REDACTED] The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. There is no evidence that [REDACTED] has a history of depression and there is no evidence he has received any treatment for his current diagnosis of major depressive disorder. In sum, the conclusions reached in the submitted evaluation, being based on merely two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

Regarding [REDACTED] medical problems, including his back pain and his prior heart attack, although the record includes copies of his medical records showing that he has "mild degenerative changes of the lumbar spine," there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of these purported conditions. The only letter from a physician in the record indicates [REDACTED] had medical issues as a result of a beating. *Letter from [REDACTED]*. There is no letter from any physician substantiating the psychologist's contention that [REDACTED] suffered a heart attack and, in fact, [REDACTED] himself does not mention a heart attack. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

With respect to the financial hardship claim, although the record contains copies of mortgage statements, mortgage payments, and loan documents, nonetheless, there is insufficient evidence showing that [REDACTED] hardship is extreme. Tax documents in the record indicate that in 2007, [REDACTED] earned \$32,460 in wages. There is no evidence in the record addressing whether the applicant worked while she lived in the United States, and, therefore, there is no evidence the applicant helped to financially support the family. Without more detailed information, the AAO is not in the position to attribute any financial difficulties [REDACTED] may be experiencing to the applicant's departure.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he were to move back to the Dominican Republic to be with his wife. The record shows that [REDACTED], who is currently fifty-four years old, was born in the Dominican Republic and lived there until he was approximately [REDACTED]. Although the record shows he has some health problems, the record does not indicate that he is receiving any regular medical treatments such that his move would disrupt the continuity of his health care. In addition, [REDACTED] does not claim that his health conditions cannot be adequately monitored and treated in the Dominican Republic and, indeed, stated that his wife "is receiving the proper treatment" for her health problems in the Dominican Republic. *Affidavit of [REDACTED]* at ¶ 6, dated September 25, 2008. To the extent [REDACTED] would be separated from

the couple's sons, the AAO notes that [REDACTED] resides in New York while both of the children attend college in Florida. In sum, the evidence does not show that [REDACTED] transition to moving back to the Dominican Republic would be any more difficult than would normally be expected under the circumstances.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she 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.