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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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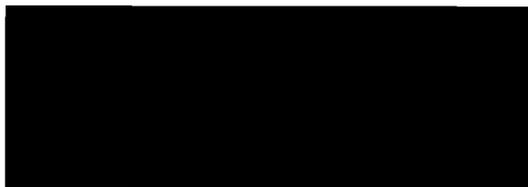
DATE: Office: MEXICO CITY, MEXICO  
**JUN 06 2011** (PANAMA CITY, PANAMA)

FILE:

IN RE: Applicant:

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:



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,

Perry Rhew

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 a citizen of the Dominican Republic who presented a false visa to attempt to enter the United States. 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 wife of a U.S. citizen. 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 District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 14, 2008.

On appeal, counsel for the applicant asserts the applicant is not inadmissible for misrepresentation and that the applicant's spouse will experience extreme hardship if the applicant's waiver is not granted. *Form I-290B*, received December 16, 2008.

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 presented a passport with a counterfeit visa when attempting to enter the United States on October 4, 2002. An inspection officer at her point of entry concluded that her passport contained a counterfeit visa and that she was inadmissible under section 212(a)(6)(C)(i). She was expeditiously removed under section 235(b) of the Act. Based on these facts, the Acting District Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel for the applicant asserts the applicant is not inadmissible under section 212(a)(6)(C)(i) because she did not willfully attempt to misrepresent her authorization to enter the United States.

The applicant explains that she is from the Dominican Republic, and understood that, in her home country, an individual had to be interviewed at the U.S. consulate in order to be granted a visa. She states that, upon travelling to Panama, a co-worker told her that was not the case and that she could have her visa stamped by a U.S. consular officer for the \$2,000 filing fee required by the United States. The applicant asserts that she was unaware that this was not legal in Panama, and had no understanding that the visa was counterfeit or that the stamp in her passport had not been put there by

a U.S. consular officer. She further stated to the consular officer that, upon her expedited removal she returned to Panama and filed a police report and contacted a lawyer, the result of which was discovery that the person who had provided the visa stamp had “scammed a lot of other people” as well.

In this case, the applicant was declared inadmissible under section 212(a)(6)(C)(i) by an inspection officer. The withdrawal of admission form states that, at the time, the applicant stated she believed the visa was authentic, that she had never been to the United States before and had never actually seen a U.S. visa.

There is no copy of any police report or statement from any lawyer in Panama. While the AAO finds the applicant’s assertions plausible, without documentary evidence to support the applicant’s assertions it cannot determine that the Acting District Director’s conclusion was incorrect. There is no copy of any police report or statement from any lawyer in Panama, nor is there any other documentary evidence which establishes that the applicant was a victim of fraud. As such, the AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i).

The record contains, but is not limited to, the following evidence: statements from counsel; statements from the applicant’s spouse; medical records and documents relating to the medical condition of the applicant’s oldest son; tax returns and pay stubs for the applicant’s spouse; an employment letter for the applicant’s spouse; a copy of a birth certificate for the applicant’s youngest son; a copy of the applicant’s spouse’s naturalization certificate and passport; a copy of a Forensic Psychological Examination by [REDACTED] RN; a copy of a translated patient overview and diagnosis statement regarding the applicant’s oldest son by [REDACTED], a pediatric neurologist; a copy of a 401(k) benefits statement for the applicant’s spouse; copies of receipts for money wire transfers paid to the applicant’s spouse’s previous wife; photographs of the applicant, her spouse and their son; and country conditions materials on the Dominican Republic and Panama.

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 [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.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-Moralez*, 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 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 AAO will first consider hardship upon relocation. On appeal, counsel for the applicant asserts that the applicant’s spouse contributes significant financial support for two children from a previous marriage and to his father. *Applicant’s Brief in Opposition to the Decision of the District Director*, dated January 15, 2009. She also asserts that the applicant would lose his 401(k) savings if he were to leave the country. Counsel asserts that the applicant’s spouse would lose his current employment and that his skills as a handyman and maintenance engineer he has acquired in the United States would not transfer to the Dominican Republic or Panama making it difficult for him to find employment there. Based on this, counsel asserts, the applicant’s spouse would not be able to support his children and father or the applicant and their children, one of whom suffers from Cerebral Paralysis and secondary epilepsy. Counsel further asserts that the poverty conditions in the Dominican Republic would result in extreme hardship to the applicant’s spouse if he were to relocate there with the applicant.

The applicant’s spouse stated that he would be unable to support his children from a previous marriage and his father if he were to relocate to the Dominican Republic. *Statement of the Applicant’s Spouse*, dated January 13, 2009. He further states that his current employer provides a 401(k) plan for him which would be dissolved if he were relocated out of the country. He cites to high unemployment rates in both the Dominican Republic and Panama and states that he would not be able to earn the same amount of money if he were to relocate to either country.

The AAO notes that the applicant currently resides in Panama. The record contains country conditions materials for Panama, however, this evidence is insufficient to demonstrate that the

applicant's spouse would be unable to find employment to support the applicant, their children and his father financially if he were to relocate there. Without documentary evidence relating evidence of employment conditions to the applicant's spouse the AAO does not find the applicant to have established that her spouse would be unable to find employment as a handyman or maintenance engineer in Panama. The AAO would also note that there is no indication the applicant herself would be unable to work in order to support herself and her children. Based on these observations the record does not support that the applicant's spouse would experience uncommon financial or other hardship upon relocation to Panama, where the applicant currently resides.

The record contains country conditions materials on the Dominican Republic, including the Country Report on Human Rights Practices, published by the U.S. State Department's Bureau of Democracy, Human Rights and Labor and the CIA World Factbook section on the Dominican Republic. While these materials illustrate that the Dominican Republic is struggling economically, they do not specifically relate to an applicant's spouse. General materials on national conditions will not establish hardship to a qualifying relative without evidence that an they will fall within a certain category or be specifically be impacted by particular conditinos there. In this case, there is no evidence that the applicant has resided in the Dominican Republic in the last decade, or that she would move to that country in the event her spouse decided to relocate abroad with her due to her inadmissibility to the United States. There is no evidence that her spouse would be unable to find employment as a maintenance contractor if he were to relocate to either country.

The record contains a letter verifying the applicant's spouse's employment, as well as paystubs and tax returns, however, there is no evidence that the applicant's spouse would lose his 401(k) retirement benefits if he relocated to Panama, where the applicant currently resides. There are also receipts for money transfers that the applicant's spouse asserts are paid to support his children from a previous marriage, but nothing which establishes what financial support he provides for his father.

As noted above there is insufficient evidence to establish that the applicant's spouse would be unable to find employment in Panama as a handy man or maintenance engineer in order to support his children and father, although the AAO acknowledges the separation from them as a hardship factor. Further, although his current employer may cease contributions into his 401(k) savings plan, there is no documentation indicating that he would lose his current savings.

Counsel asserts that the applicant's spouse would experience an additional emotional hardship upon relocation because he would not earn sufficient income in the Dominican Republic to help financially support the applicant's child from a previous marriage. Counsel explains that this child suffers from cerebral paralysis and secondary epilepsy. As discussed above, children are not qualifying relatives in this proceeding, thus, any hardship to them is only relevant as it indirectly impacts a qualifying relative. While the record does contain some medical documentation regarding this child, the most recent documentation is from the year 2000. There is no evidence that the applicant's spouse has previously provided any financial support for this child, or even that the child remains in the custody of the applicant, who currently resides in Panama. In addition, as noted above, there is no evidence that the applicant intends to move to the Dominican Republic and that

her spouse would relocate to that country with her. There is insufficient evidence to establish that the applicant's spouse would experience any indirect hardship related to the financial support of the applicant's child from a previous marriage in the event that he were to relocate to the Dominican Republic.

The AAO notes that the applicant's spouse has two children from a prior marriage who reside in the United States, as well as his father and an aunt. The AAO recognizes that the applicant's spouse would experience some emotional impact due to separation if he were to relocate to Panama. However, even when the impacts asserted are examined in the aggregate, they do not rise above the common hardships that are experienced by the relatives of inadmissible aliens who relocate abroad. As such, the applicant has failed to establish extreme hardship to a qualifying relative upon relocation.

With regard to hardship upon separation, the applicant's spouse has submitted a statement asserting that he is experiencing emotional hardship due to separation from the applicant. *Statement of the Applicant's Spouse*, dated January 13, 2009. The applicant's spouse also notes that the conditions in Panama are such that they feel it necessary to relocate their son to the United States, and that separation from his mother will result in emotional hardship to their son. He further asserts that the applicant's oldest son, who has medical conditions, would benefit from residing in the United States. *Statement of the Applicant's Spouse*, dated June 12, 2008.

The record contains a psychological examination of the applicant's spouse by [REDACTED], dated January 12, 2009. In her report she notes that the applicant's spouse is experiencing emotional hardship and somatic symptoms related to his mental anxiety due to separation from the applicant. She diagnoses the applicant's spouse with moderate Major Depression. The AAO will give due consideration to [REDACTED] report.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even 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 articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute 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. 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 he 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.