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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  
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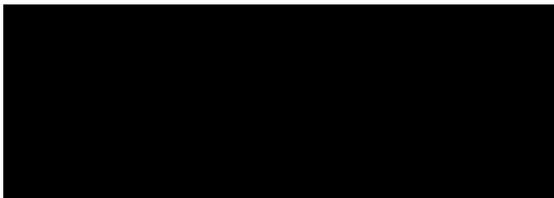
MAR 24 2011

FILE: [REDACTED] Office: NEWARK, NEW JERSEY Date:

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.

*Perry Rhew*

Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office 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 February 3, 1996 through the use of a fraudulent passport and permanent resident card. 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 Field Office 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 Field Office Director* dated February 12, 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 medical and financial 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, mother and various extended family members. The applicant's attorney also states that the applicant's spouse would face safety and financial issues if she relocated to the Dominican Republic to be with the applicant.

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), an appeal brief written on behalf of the applicant, the brief initially submitted with Form I-601, affidavits from the qualifying spouse and the applicant, a letter from a doctor regarding the qualifying spouse, a psychoemotional assessment, a marriage certificate, the qualifying spouse's naturalization certificate, several identify documents for the applicant and family members, photographs of the applicant and his family, country condition materials and evidence 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 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 the present case, the record reflects that the applicant obtained admission into the United States on or about February 3, 1996 through the use of a fraudulent passport and permanent resident card in an assumed name. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States through fraud or misrepresentation.

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 affidavits from the qualifying spouse and the applicant, a letter from a doctor regarding the qualifying spouse, a psychoemotional assessment, country condition materials, and tax returns and other financial documentation submitted in conjunction 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 medical and financial hardships as a result of the applicant’s inadmissibility. In addition, the applicant’s attorney contends that the applicant’s spouse has family ties to the United States, including her children, mother and various extended family members. The applicant’s attorney

also states that the applicant's spouse would face safety and financial issues if she relocated to the Dominican Republic to be with the applicant.

The AAO finds that the applicant failed to demonstrate that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the applicant's wife has health issues including chronic migraines and hypertension. The record contains a letter from a doctor indicating that he is treating the qualifying spouse for these issues. However, the letter failed to explain the exact nature and severity of her conditions and did not provide a description of any treatment or family assistance needed. As such, the AAO is not in the position to reach conclusions concerning the severity of her medical conditions or treatment needed. Moreover, the applicant's attorney indicates that the applicant's spouse would suffer financially if the applicant returns to the Dominican Republic. The record only contains dated financial documentation that was submitted in conjunction with the Form I-485, including tax returns and letters from employers, reflecting the income of the applicant and qualifying spouse from 2002 through 2005. The record fails to include information pertaining to their current financial situation including their current income and expenses. Although the qualifying spouse states in her affidavit that she purchased a small store in February of 2007, and that the business is not generating enough income to support her family, the record contains no documentation to support the existence of this business or its income or lack thereof. As such, there is insufficient evidence to demonstrate that the qualifying spouse will suffer financially without the applicant.

With regard to the potential emotional and psychological issues that the qualifying spouse may encounter, the record contains an affidavit from the qualifying spouse and a psychoemotional assessment. In the qualifying spouse's affidavit, she states that she would be "devastated" if the applicant were to return to the Dominican Republic, and that even thinking about being separated from the applicant causes her "indescribable sadness." The psychoemotional assessment also indicates that the qualifying spouse may experience emotional and psychological issues as a result of her separation from the applicant. However, the psychoemotional assessment does not recommend any treatment or medication for her emotional issues and there is no other evidence in the record, such as letters from friends, family or coworkers, to evidence how her psychological and emotional issues rise to the level of extreme. Although the distress caused by separation from one's spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. As such, the applicant has not met his burden in showing that the qualifying spouse would suffer extreme hardship if she remained in the United States without him.

However, the applicant has demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to the Dominican Republic with the applicant. The qualifying spouse, in her affidavit, indicated that her children, mother, and extended family live in the United States. Further, the qualifying spouse asserted that she has lived in the United States for almost twenty years, and the record contains supporting documentation to confirm these assertions. With regard to the assertions relating to potential financial hardships in the Dominican Republic, country condition materials confirm that the qualifying spouse may encounter problems due to lack of employment opportunities upon relocation. More specifically, the CIA World Factbook for the Dominican Republic notes that "although the economy is growing at a

respectable rate, high unemployment and underemployment remains an important challenge.” Moreover, it indicates that “the richest 10% enjoys nearly 40% of the national income.” The applicant’s attorney also contends that the qualifying spouse could face safety concerns as an American living in the applicant’s home country. The country condition information from the Department of State confirms that Americans are being targeted for criminal activity such as theft, violence and kidnappings. As such, the record reflects that the cumulative effect of the qualifying spouse’s family ties to the United States, her length of stay in the United States, and her financial and safety concerns, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying spouse would suffer extreme hardship if she accompanied the applicant 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.