U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

Date: OCT 1 1 2011 Office: NEWARK, NJ 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:

[redacted]

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 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 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 procuring admission to the United States using a fraudulent passport on January 25, 1995. The applicant also filed an Application to Replace Alien Registration (Form I-90) on three separate occasions using fraudulent information. 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 with his family.

The record shows that the applicant was convicted for shoplifting, under the alias he used when entering the United States, on April 24, 2003 in the County of Somerset, New Jersey. The Field Office Director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

In a decision dated April 30, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated April 30, 2009.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserts that the qualifying spouse wants to have a child and has already suffered from a miscarriage, and would suffer emotional and psychological issues upon separation from the applicant. Further, the applicant's attorney indicates that the qualifying spouse is "not in good physical shape" and is being treated for ovarian cysts. Further, the applicant's attorney contends that the qualifying spouse would suffer extreme hardship upon relocation to the Dominican Republic.

In the appeal brief, the applicant's attorney also asserts that the CIS officer erred by stating that the qualifying spouse was a United States citizen and by referring to her as [redacted], as this is not her name. However, USCIS records indicate that the applicant's spouse became a naturalized United States citizen on April 22, 2008. Further, the birth certificate provided for the qualifying spouse indicates that her second last name is [redacted] and Form I-130 and the biographic information (Form G-325A), which were both signed by the qualifying spouse, lists under "other names used" the name [redacted]

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief from the applicant's attorney, country condition materials,

the applicant's birth certificate, financial documentation, an affidavit from the qualifying spouse and her mother, a reference letter from the applicant's church, a psycho-emotional assessment, a marriage certificate, the qualifying spouse's birth certificate and alien registration card, a letter regarding the qualifying spouse's enrollment in school, the applicant's child's birth certificate and other documentation submitted in conjunction with Form I-485.

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

> (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 that:

> 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-Moralez,* 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.

In the present case, the record reflects the applicant procured admission to the United States using a fraudulent passport on January 25, 1995. The applicant also filed a Form I-90 on three separate occasions using fraudulent information. The applicant does not contest his inadmissibility. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for making material misrepresentations and for entering the United States through fraud or misrepresentation.

The applicant's qualifying relative is his wife, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an appeal brief from the applicant's attorney, country condition materials, financial documentation, an affidavit from the qualifying spouse and her mother, a psycho-emotional assessment, a letter regarding the qualifying spouse's enrollment in school and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant's attorney asserts that the qualifying spouse wants to have a child and has already suffered from a miscarriage, and would suffer emotional and psychological issues upon separation from the applicant. Further, the applicant's attorney indicates that the qualifying spouse is "not in good physical shape" and is being treated for ovarian cysts. Further, the applicant's attorney contends that the qualifying spouse would suffer extreme hardship upon relocation to the Dominican Republic.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the qualifying spouse would suffer from not being able to have children and that she has already suffered from a miscarriage. However, no evidence of the qualifying spouse's miscarriage was provided, even after the Field Office Director noted the absence of documentation to corroborate the qualifying spouse's assertions. *See Decision of the Field Office Director* dated April 30, 2009, page 7. Further, while we recognize that it may be more difficult for the applicant and qualifying spouse to have children upon separation, such concerns are normal consequences of separation. There is no evidence provided regarding any specific emotional or medical issues that would result from her separation from the applicant. Similarly, the applicant's attorney also claims that the applicant's wife will also encounter medical hardships upon separation from the applicant. The applicant's attorney claims that the applicant is not in good physical condition and is currently being treated for ovarian cysts. The record also fails to contain any documentary evidence of the qualifying spouse's medical issues, such as a letter from a physician diagnosing her condition. The psychologist's evaluation notes that the qualifying spouse reported to her that she is being treated for numerous chronic ovarian cysts. However, without a detailed letter from the treating physician explaining her condition and its severity and any treatment or assistance needed, the AAO is not in the position to reach conclusions concerning the medical condition.

In her affidavit, the qualifying spouse indicates that she has suffered emotionally due to the applicant's immigration issues. With respect to the qualifying spouse's psychological hardships, the record contains a psychological evaluation conducted in January 2006 and an affidavit from the qualifying spouse. In her affidavit, the qualifying spouse asserts that she "cannot bear the thought of my future children being forced to grow up without [redacted] in their lives." The qualifying spouse also states that she is experiencing "a deep sense of tension and anxiety." The psychological evaluation indicates that the qualifying spouse and the applicant reported symptoms of anxiety and depression, but that the applicant's scores were "significant, falling in the 'severe' range." Furthermore, the assessment notes in its summary that the applicant "evidenced significant symptoms of anxiety and depression." With respect to the qualifying spouse, the psychologist indicates that she counts on her husband for emotional support and as a caretaker to her mother. However, the psychologist did not

state that the qualifying spouse's symptoms were significant or severe, nor did the psychologist make a diagnosis with respect to the qualifying spouse's psychological condition. Although the input of any mental health professional is respected and valuable, the record fails to reflect an ongoing relationship between the mental health professional and the qualifying spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the evidence provided failed to provide detail or supporting evidence explaining how her emotional and psychological hardships are outside the ordinary consequences of removal. Although the AAO recognizes that the applicant's spouse may be facing emotional and psychological issues, the record does not establish that her condition is severe enough to affect her daily activities or otherwise rise to the level of extreme hardship.

Further, the qualifying spouse asserts that "it would be impossible for me to maintain our family without [redacted] and that she depends on him financially. The record contains financial documentation including some banking information, expenses and tax return transcripts, the most recent from 2005. However, no current financial documentation was submitted with the appeal. The record also contains a letter from 2006 indicating that the qualifying spouse is enrolled in cosmetology school. There is no evidence of the qualifying spouse's current profession or income, which may have changed with her cosmetology training. While there are a few earnings statements provided from 2007 for the qualifying spouse, her overall financial situation, including her income and expenses, is not clear from the record.

Further, the applicant's attorney asserted that the qualifying spouse would suffer extreme hardship upon relocation to the Dominican Republic and provided country condition information. In the qualifying spouse's affidavit, she indicates that it would be difficult for her to seek treatment there for her adjustment disorder and anxiety. However, the psychological evaluation did not diagnose her with adjustment disorder, nor did it recommend treatment. There is also no specific evidence in the record that indicates the qualifying spouse would be unable to obtain psychological treatment in the Dominican Republic if she needed it. The qualifying spouse also states that she would suffer extreme hardship due to "harsh conditions" in the Dominican Republic. However, the qualifying spouse fails to specify the harsh conditions she references. With respect to family ties, the qualifying spouse appears to be close with her mother, as per the letter submitted from her mother, but no claim was made concerning the effects of separation from her mother or any other family members in the United States. Further, the record is silent regarding the applicant's family in the Dominican Republic, other than his daughter, and whether he has family ties there that could help to support them upon relocation.

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.