

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
PUBLIC COPY**

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

H5

DATE: **OCT 17 2011**

Office: NEW YORK, NY

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:

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 District Director, New York, New York. 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the child of a Lawful Permanent Resident (LPR) of the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United.

The District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated June 19, 2009.

On appeal, counsel asserts that the removal of the applicant from the United States would result in extreme hardship to his LPR parents. *Form I-290B, Notice of Appeal or Motion*, dated July 15, 2009.

The record includes, but is not limited to, a letter from counsel; statements from the applicant and his mother; copies of tax returns, earnings statements and W-2 Wage and Tax Statements relating to the applicant and his mother; letters of employment for the applicant and his mother, and letters of support from friends of the applicant. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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.

The record reflects that the applicant testified at his adjustment interview that he had entered the United States on August 28, 1992, using a passport belonging to another person. In that the applicant obtained admission to the United States with a passport and visa belonging to another person, he procured an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that removal of the applicant would cause extreme hardship to his LPR parents. Counsel states that the applicant's father suffers from Alzheimer's disease, and that he is unable to take care of himself in the basic areas of daily living. Counsel claims that the applicant's mother is herself infirm and unable to attend to her husband's needs. In a statement dated January 6, 2009, the applicant states that his father was diagnosed with prostate cancer in 2004 and Alzheimer's Disease in 2005. The applicant asserts that his now 78-year-old mother is physically and emotionally incapable of taking care of his father and that he helps her when his father becomes confused, irritable and aggressive, and has language breakdowns. The applicant also claims that he is the one who provides for his parents and that he takes them to their medical appointments and to do food shopping.

In a January 6, 2009 statement, the applicant's mother states that she has been devoted to her husband, but because of her advanced age, she is physically and emotionally limited as to what she can do. The applicant's mother states that her husband has serious medical problems, that he does not have insurance coverage for his Alzheimer's disease and that he is not eligible for any assistance. The applicant's mother asserts that her husband's illness has placed a social, psychological, physical and economic burden on her. She indicates that the applicant is the only one who provides emotional and financial support to them, and that the applicant helps her take care of his father so that she can get some rest. The applicant's mother also indicates that the applicant helps them with food shopping, meal preparation, and doctors' appointments. The applicant's mother contends that if the applicant is removed from the United States, "it would be the death of myself and my husband."

The AAO notes counsel's claim that the applicant's father is a LPR. However, there is nothing in the record that documents the applicant's father as a LPR. As the record does not establish that the applicant's father is a qualifying relative, any hardships he may suffer as a result of the applicant's inadmissibility will be considered only in relation to their impact on the applicant's mother, the only qualifying relative in this case.

The AAO also notes the claims by counsel about the applicant's father's health problems and their impact on the applicant's mother. However, again the record fails to document these problems and, therefore does not support the claims made concerning how the applicant's mother has been affected by her husband's health or that she requires the applicant's help in caring for her husband. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As the applicant has failed to establish that his father is a qualifying relative, that he has serious health problems that have impacted the applicant's mother, the only qualifying relative in this case, the applicant has failed to establish that his mother would suffer extreme hardship as a result of his inadmissibility.

As to the applicant's claim that he provides financial and other assistance to his mother, the record fails to document that the applicant has been providing financial assistance to his mother and the extent of that assistance. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on our review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's mother would experience extreme hardship if the waiver application is denied and she continues to reside in the United States without the applicant.

The applicant asserts that his parents would not be able to leave the United States because of their physical and mental conditions. The applicant's mother states that she cannot move her husband to an area with which he is no longer familiar and that they cannot physically or emotionally move to a different environment.

While the AAO again acknowledges these claims, we do not find the evidence in the record to support them. The hardship claim by the applicant's mother is based on the impact her husband's health would have on her if they relocated to the Dominican Republic. However, the record does not contain any medical records or other reports documenting the applicant's father's health conditions or how his health will be impacted upon relocation to the Dominican Republic. The record also lacks any evidence documenting the health condition of the applicant's mother or how her health would be impacted upon relocation. As the applicant does not indicate any additional hardship factors that would affect his mother if she moves to the Dominican Republic, the AAO determines that the applicant has failed to demonstrate that his mother would experience extreme hardship if she were to relocate to the Dominican Republic.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found him statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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.