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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

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**U.S. Citizenship
and Immigration
Services**



#5

Date: **SEP 01 2011**

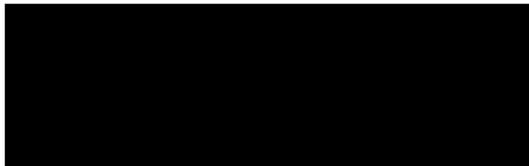
Office: PHILADELPHIA, PA

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

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 having gained entry into the United States by fraud or willfully misrepresenting a material fact. The applicant is the spouse of a United States citizen and the daughter of a Lawful Permanent Resident. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 27, 2009.

On appeal, counsel states that the director erred in denying the application and asserts that the applicant has established extreme hardship to her United States citizen spouse and her Lawful Permanent Resident mother. Counsel submits a brief and additional evidence. *See Form I-290B and counsel's brief and attachments.*

The record includes, but is not limited to, statements from the applicant and his spouse describing the hardships claimed; an affidavit from the applicant's mother describing her hardship claim; a March 20, 2009 letter from [REDACTED] relating to the applicant's spouse; school records for the applicant's older daughter; letters from [REDACTED] and [REDACTED] [REDACTED] letters of support from friends of the applicant; letters from the applicant's children; an undated list of monthly expenses; a residential lease; bank statements; income tax returns for the years 2005, 2006, and 2007; a medical statement and records relating to the applicant's mother; country conditions materials concerning the Dominican Republic; and counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record indicates that in June 1999, the applicant presented a fraudulent Spanish passport to gain entry into the United States under the Visa Waiver Program. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having gained entry into the United States by willfully misrepresenting a material fact.

Section 212(i) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband and mother are the qualifying relatives 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.

The applicant’s spouse states that he will suffer extreme emotional, physical, and financial hardship if he resides in the United States without the applicant. He states that their family is very close and that they need each other for support. The applicant’s spouse asserts that he depends on his wife to care for their children and attend to the household while he works to support the family. He states that one of his daughters has a learning disability and needs special education. The applicant’s spouse also states that he has difficulty sleeping because he fears that his family will be separated.

The applicant states that her spouse needs her to care for their home and their children because he works long hours to pay their monthly household bills. Counsel states that the applicant’s spouse, being the sole breadwinner, will be overburdened if he has to care for their three children, and, at the same time, work to maintain the family.

The record contains a March 20, 2009 letter from [REDACTED] stating that the applicant’s spouse is being treated for hypertension and depression, and that his concerns that the applicant will be removed “[are] having a serious effect on his health.” The record also includes a November 3,

2008 Evaluation Report from the School District of Lancaster confirming that the applicant's older daughter has a learning disability and requires specially designed instruction. The evaluation report also states that the "[applicant's daughter] is a student with limited English language proficiency. However, her dominant language is English. [She] is not literate in Spanish." The report states that "[the applicant's daughter] needs individual and small group instruction to increase her literacy and math skills." Included in the record are Tier III Reports from [REDACTED] dated November 8, 2007 and May 15, 2008, which indicate that the applicant's daughter's academic progress is "Below Basic in all areas either on a kindergarten or first grade level." An October 21, 2008 letter from the Pennsylvania Department of Labor & Industry, Bureau of Disability Determination, confirms that a disability claim had been filed by the applicant's spouse on behalf of his daughter. An April 16, 2009 letter from [REDACTED] of the School District of Lancaster states that the "[applicant's spouse] has been extremely supportive in her involvement in the children's education...," and she has actively participated in family workshops and attended PTO meetings. In a December 23, 2008 letter, [REDACTED] a friend of the applicant and her spouse, states that it would be very difficult for the applicant's spouse to take care of his children alone because his job keeps him away from home for long hours. An undated letter from [REDACTED] attests to the applicant's involvement in her elder daughter's tutoring. [REDACTED] states that both the applicant's older children are tutored twice a week because of their learning problems; that they could not continue with this program if the applicant was not available to bring them for the tutorials; and that the applicant reinforces the learning concepts presented at the children's tutoring sessions at home.

The record also includes income tax returns showing that the applicant's spouse earned gross income of \$15,785.00 in 2005, \$42,893.00 in 2006, and \$42,443.00 in 2007; and a list of monthly household expenses in excess of \$4,000.00; a residential lease showing \$800.00 monthly rent; and a checking account statement for the period November 12, 2008 to December 10, 2008. While it appears that the applicant's spouse's earnings are low relative to the claimed monthly expenses, the record includes no documentation to support the listed expenses beyond the copy of the residential lease just noted. Without this evidence, the AAO is unable to determine the family's financial situation and, therefore, cannot assess the nature and extent of the financial hardship that the applicant's spouse would experience as a result of separation.

The AAO does, however, take note of the added responsibilities that would fall upon the applicant's spouse in her absence, particularly those relating to his children's educational needs. We further note the report from [REDACTED] that indicates the applicant's spouse's concerns regarding the applicant's removal have had a serious effect on his health. When these specific factors and those hardships that normally result from the separation of a family are considered in the aggregate, the AAO concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship.

Regarding relocation, counsel asserts that health services for young children are superior here in the United States; and that the applicant's older daughter would have difficulty adjusting to living in the Dominican Republic based on her learning disability and because she is not literate in Spanish.

Counsel contends that the difficulties the applicant's daughter would face upon relocation would result in hardship to her father as well. The applicant's spouse states that his older daughter suffers from a severe learning disability and she would not be able to receive the same quality attention in the Dominican Republic as she does in the United States.

As previously discussed, the Evaluation Report from the School District of Lancaster confirms that the applicant's older daughter has a learning disability and requires specially designed instruction; that she is a student with limited English language proficiency; that her dominant language is English and she is not literate in Spanish; and that she needs individual and small group instruction to increase her literacy and math skills. The record also indicates that the applicant's daughter is in a tutorial program to assist her with her learning problems.

The AAO acknowledges the pronounced negative effect that moving to an unfamiliar educational system and being taught in a language of which he or she has only a limited understanding would have on a child with significant learning disabilities. We further note the emotional hardship that would result for the parent of such a child. Therefore, we find that when considered in the aggregate, the hardship that would be experienced by the applicant's spouse as a result of his daughter's educational struggles in the Dominican Republic and the normal disruptions and difficulties created by relocation would result in extreme hardship for the applicant's spouse.

It has thus been established that the applicant's spouse would suffer extreme hardship if he relocates to the Dominican Republic to reside with the applicant.

However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions and procedures as prescribed by regulation.

The favorable factors in this matter are the applicant's U.S. citizen spouse and children, and her Lawful Permanent Resident mother; the extreme hardship to the applicant's spouse if the waiver application is not approved, the medical problems of the applicant's spouse's Lawful Permanent Resident mother; the absence of a criminal record on the part of the applicant; the various letters of support attesting to the applicant's character; and the letters from the [REDACTED] principal and outreach worker, and the president of [REDACTED] attesting to the applicant's involvement in her children's education, particularly that of her older daughter. The unfavorable factors in this matter are the applicant's long-term unlawful presence in the United States and her use of a fraudulent passport to enter the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the mitigating factors in the present case outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant.

Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.