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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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Date: **SEP 09 2011**

Office: SANTO DOMINGO,
DOMINICAN REPUBLIC

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact; and section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for being previously removed from the United States.¹ The applicant is married to a United States citizen and the father of three United States citizen stepsons. He is the beneficiary of an approved 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 reside in the United States with his spouse and stepchildren.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 26, 2009.

On appeal, the applicant apologizes for attempting to enter the United States through fraud. *See applicant's declaration, attached to Form I-290B*, dated March 26, 2009. Additionally, he claims that he and his wife want to have children; however, his wife cannot move to the Dominican Republic because of her disabled son. *See id.*

The record includes, but is not limited to, counsel's appeal brief, declarations and statements from the applicant and his wife, letters of support for the applicant and his wife, a mental health evaluation on the applicant's wife, medical documents for the applicant's stepson, a letter from the social security administration regarding supplemental security income payments for the applicant's stepson, school records for the applicant's stepchildren, bankruptcy documents for the applicant's wife, shipping and money transfer receipts, utility and household bills, earning statements for the applicant's wife, and documents from the applicant's removal proceeding. 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.

....

¹ The AAO notes that the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, in that it has been more than five (5) years since the applicant's removal from the United States.

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

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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...

In the present case, the record indicates that on September 27, 2003, the applicant attempted to enter the United States by presenting a photo-substituted visa.² In addition, the applicant applied for a nonimmigrant visa on February 2, 2005, and failed to disclose that he was married and that his wife resided in the United States. Based on these misrepresentations, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 stepchildren can be considered only insofar as it results in hardship to a qualifying relative. 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 United States Citizenship and Immigration Service (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 of Immigration Appeals (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

² The record shows that the applicant has been convicted of fraud. 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).

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 a mental health evaluation dated December 12, 2010, [REDACTED] reports that the applicant's wife "does not feel that she could go to live with [the applicant] in the Dominican Republic." In counsel's appeal brief dated February 1, 2011, counsel states "[r]elocation to the Dominican Republic

would be devastating for [the applicant's wife]." In a declaration dated December 22, 2010, the applicant's wife states she feels "exhausted and depressed." Counsel states that if the applicant's wife joins the applicant in the Dominican Republic, she would lose "the support she receives from her mother and brother." The applicant's wife states that she "would be unable to ship anything overseas and would have to leave everything behind." In a statement dated August 26, 2008, the applicant's wife states there would be a financial impact in moving to the Dominican Republic. Counsel states that the applicant's wife cannot leave her children in the United States because there is no one to care for them, especially her youngest son, who is disabled. The AAO notes that the applicant's wife states her mother, who lives on the second floor of her building, helps care for her children after school. The applicant's wife states that her oldest son "wants to change his sexual identity." She explains that she cannot leave him in the United States because she is "terrified that he will prostitute himself because he will not have enough money for the [sex change] operation that he wishes to have." Counsel states the applicant's wife would be risking her family's safety by moving to the Dominican Republic, since her eldest son "has an issue of sexual identity" and he would be "vulnerable to assault or worse given the intolerance to transsexuals in the Dominican Republic." The applicant's wife also claims that her middle son has a learning disability. [REDACTED] reports that the applicant's wife's middle son "had to repeat second grade due to his learning disabilities." The AAO notes the claims made regarding the difficulties the applicant's wife and stepchildren would face in relocating to the Dominican Republic.

The applicant's spouse states "what is most important" and "what would affect [her] the most" is the medical condition of her youngest son. In a letter dated October 5, 2009, [REDACTED] states the applicant's spouse's youngest son "has Sotos syndrome, which is [a] disorder characterized by overgrowth in childhood and learning disabilities or delayed development." Additionally, [REDACTED] the applicant's stepson "has hemihypertrophy of his left side, with his left leg longer than his right" and mild intermittent asthma. [REDACTED] indicates that the applicant's stepson requires assistance climbing stairs and using the toilet. [REDACTED] states the applicant's stepson "requires ongoing physical, occupational, and speech therapy in school." In a statement dated January 11, 2011, [REDACTED] a doctor in the Dominican Republic, states the Dominican Republic does not have the resources to manage the applicant's stepson's medical condition and the environment is "not good for his condition." Counsel states that in the Dominican Republic, the applicant's stepson would not get "the care he needs, as there is no health care insurance there," and the applicant and his wife "would not be able to earn enough money to pay for such care." [REDACTED] reports that the applicant's stepson's "medical care is paid for by Medicaid." [REDACTED] also reports that the applicant's stepson is going to have an operation to make both of his legs the same length. The AAO notes the medical concerns for the applicant's stepson.

The AAO acknowledges that the applicant's wife has been residing in the United States for many years and that she may experience some hardship in relocating to the Dominican Republic. Based on the record as a whole including the applicant's spouse's emotional issues, her separation from her mother and brother, losing her employment and property in the United States, disruption of her son's medical treatments and special education, losing Medicaid for her son, and having to raise her children in the Dominican Republic, the AAO find that the applicant's wife would suffer extreme hardship if she were to return to the Dominican Republic to be with the applicant.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, in a statement dated December 29, 2010, the applicant states he and his wife want to have another baby, but they have to be together. Counsel states the applicant's wife "suffers from pre-existing clinical depression," "exhaustion," and she "has been prescribed anti-depressants." The applicant's wife states she needs the applicant's "emotional and financial support." In his mental health evaluation, [REDACTED] states the applicant's wife "is suffering great emotional hardship as a result of not having the economic, emotional and moral support of [the applicant]." [REDACTED] also states that if the applicant were in the United States, he could help his wife with caring for the children and possibly getting a job to help with the household finances. The AAO notes that the record contains evidence showing that the applicant's wife's middle son is displaying disturbing behavior in school and the school counselor recommends that he receive outside therapy. *See letter from [REDACTED] IS 528 Counselor*, dated January 20, 2011. Counsel states the applicant's wife supports her three sons on her wages, welfare, and child support. Counsel claims that the applicant earns about \$400.00 per week, she receives \$650.00 per month in child support, she receives food stamps, and her monthly expenses exceed \$1,400.00. The AAO notes that the applicant's wife also receives a monthly payment of \$650.34 in SSI for her disabled son. *See letter from [REDACTED] dated December 4, 2010.* The applicant's wife states she does not earn "enough to cover [her] expenses." Additionally, the applicant's wife states she is "always filled with financial problems" with having to travel to the Dominican Republic to see the applicant. The AAO notes that [REDACTED] reports that the applicant "sometimes pays for the airline ticket" for the applicant's wife. Counsel claims that because of the applicant's wife's low income, "she is currently in the process of declaring bankruptcy." The AAO notes that the record contains documents establishing that the applicant's wife consulted attorneys on filing for bankruptcy; however, there are no documents in the record establishing that she actually filed bankruptcy. The AAO notes the applicant's wife's concerns.

The AAO finds the record to include some documentation of the applicant's wife's income and expenses; however, this material offers insufficient proof that the applicant's wife is unable to support herself in the applicant's absence. Additionally, the AAO notes that there is no documentary evidence in the record establishing that the applicant is unable to obtain employment in the Dominican Republic and, thereby, financially assist his wife from outside the United States. However, considering the applicant's spouse's mental health issues; raising her children, including a disabled child, without the assistance of the applicant; and the normal hardships that result from the permanent separation of a loved one, the AAO finds the record to establish that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the

exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentations and his removal from the United States. The favorable and mitigating factors are the applicant's United States citizen wife and stepchildren, the extreme hardship to his wife if he were refused admission, and the letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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