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

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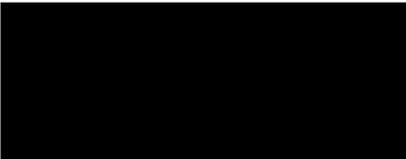
DATE: APR 23 2012 OFFICE: CALIFORNIA SERVICE CENTER

File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen. The motion will be granted and the prior decision of the AAO will be reversed. The application will be approved.

The applicant is a native of the Dominican Republic and citizen of the Dominican Republic and Venezuela who was found to be inadmissible 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 lawful permanent spouse and child and his U.S. citizen children and grandchildren.

The AAO concluded that the applicant failed to establish the existence of a qualifying relative for purposes of a Form I-601 waiver under section 212(i) of the Act, and dismissed the appeal of the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601). See *Decision of the Administrative Appeals Office*, dated November 17, 2009.

On motion, counsel asserts that the applicant's lawful permanent resident spouse will suffer extreme hardship if the waiver is not granted, a fact not previously considered or asserted due to the applicant's reliance on a non-lawyer impersonating an immigration attorney. *Form I-290B*, Notice of Appeal or Motion, dated October 30, 2008 and counsel's supporting brief.

The applicant has supplemented the record with counsel's brief in support of motion; documents concerning said non-lawyer; Form I-290B and applicant's statement thereon; newly filed Form I-601 naming the applicant's spouse as qualifying relative; her hardship affidavit, medical records, lawful permanent resident card and marriage certificate; USC daughter's letter; Dominican Republic country conditions documents; and Venezuela country conditions documents. The record also contains, but is not limited to: previously submitted Form I-290B and denial letter; previously submitted Forms I-601, I-485 and denials of each; records concerning the applicant's 1974 immigration violation and conviction; and previously submitted Form I-130. The entire record was reviewed and considered in rendering this decision.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In support of the present motion to reopen, the applicant submits extensive documentary evidence establishing that the self-described "immigration attorney" hired to represent him was a notorious fraud operating an unlicensed "law practice" for years defrauding those in need of immigration assistance who relied on his "expertise." The evidence submitted shows that [REDACTED] defrauded the applicant and filed documents containing errant factual and legal assertions, most notably failing to present the applicant's lawful permanent resident spouse as a qualifying relative for purposes of a section 212(i) waiver and instead attempting to present a claim through his daughter and grandchildren. The applicant submits substantial documentary evidence that his

spouse is currently and was at the time of the first Form I-601 filing, a lawful permanent resident of the United States and thus a qualifying relative for a section 212(i) waiver. In support of the motion to reopen, the applicant submits evidence addressing both separation and relocation-related hardships to his lawful permanent resident spouse. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2), and the motion will be granted and the matter reopened.

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 on or about July 26, 1974, the applicant entered the United States without inspection at Charlotte Amalie, St. Thomas, Virgin Islands. On or about August 2, 1974, the applicant made a false claim to U.S. citizenship by presenting the birth certificate of another individual to immigration officers at the airport in St. Thomas, in an attempt to board a flight to New York. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).¹ The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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

- (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.

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

¹ The record reflects that in conjunction with his 1974 immigration violation, the applicant was convicted on September 10, 1974 of false impersonation of a U.S. citizen and misrepresentation and concealment of facts, in the District Court of the Virgin Islands. Thus, the applicant may also be inadmissible under section 212(a)(2)(A)(i) of the Act, for having been convicted of a crime involving moral turpitude. Because it has already been determined that 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 additionally inadmissible under section 212(a)(2)(A)(i)(I).

lawfully resident spouse or parent of the applicant. Hardship to the applicant or applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. 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).

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 record reflects that the applicant's spouse is a 67-year-old native and citizen of the Dominican Republic and lawful permanent resident of the United States who married the currently 74-year-old applicant in August 1961. She states that their first marriage lasted more than eight years, and that after marrying again on October 2, 1982, they have now been remarried for almost thirty years. The applicant's spouse states that through their nearly forty years together, she and her husband have had six children including three U.S. citizens and one a lawful permanent resident. She states that she would suffer not only extreme emotional hardship if separated from her husband of many decades, but would suffer loss of the essential role he plays in her medical care and physical wellbeing. The applicant's spouse states that she has diabetes, high blood pressure and high cholesterol for which she takes numerous medications, and osteoporosis which has affected her spine. [REDACTED] states that the applicant's spouse is under his care for Hypertension, Hyperlipidemia, Osteoporosis, Chronic Hepatitis C, and Uncontrolled Diabetes Mellitus Type 2. [REDACTED] states that these conditions are chronic and require much attention and support. [REDACTED] states that the applicant accompanies his spouse to all her medical appointments and is extremely involved in her care. [REDACTED] states that in his opinion, the applicant is a critical factor in maintaining the well-being of the applicant's spouse.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including that she and her husband first married in 1961, have been remarried since 1982 and have spent approximately 40 years of their lives together; the advanced ages of the applicant and the applicant's spouse; the emotional impact of being separated from her husband of so many years; the detrimental health-related impact of separation as described by her physician, [REDACTED] the many chronic medical conditions suffered by the applicant's spouse and the assistance, care and support she receives daily from her husband for these; the financial and physical burden of having to hire someone new to cook, clean, and do laundry, as well as accompany her to medical appointments and provide other personal daily services currently performed by her husband, or instead having to take on these tasks herself in light of her serious and chronic medical conditions.

The AAO finds that when considered in the aggregate, the difficulties described take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is sufficient to demonstrate that the challenges to the

qualifying relative, when considered cumulatively, meet the extreme hardship standard. Accordingly, the AAO reverses its previous finding concerning separation.

Addressing relocation-related hardship, the applicant's spouse states that she would greatly suffer if she had to leave the United States after living here for many decades and having finally obtained her green card. She states that abandoning her four children and her grandchildren in the U.S. – particularly her two daughters and their children to whom she is so close would be an extreme hardship for her. The applicant's spouse states that due to her family's economic situation in the Dominican Republic, she was able to complete only a third grade education, and losing her U.S. employment after all she has been through would result in extreme hardship and almost certain unemployment in either the Dominican Republic or Venezuela where at her advanced age and in her compromised physical condition, she would be forced to compete with much younger stronger women for jobs such as house cleaning. The applicant's spouse states that even if she is able to find such a job, it would be extremely dangerous for her health and wellbeing. Counsel states that the applicant's spouse is currently insured through her employment, and with that insurance she is able to purchase her needed medications and maintain regular visits to her physician(s). The applicant's spouse states that despite the danger to her health, she must find work if she relocates as she would have no other way of paying for housing and the necessary medication on which she relies for a number of chronic and serious medical conditions. She states that the possibility of her even older 74-year-old husband finding work is even less promising as he would be competing with much younger, stronger men. The applicant's spouse states that her daughter, [REDACTED] makes barely enough money in the Dominican Republic to sustain herself and her three children and [REDACTED] small home would be unable to house her parents too. She states that her son, [REDACTED] makes barely enough money to sustain his family in Venezuela, where one is also faced with many political problems since Hugo Chavez became President.

The record contains substantial documentary country conditions evidence for both the Dominican Republic and Venezuela, addressing economic, employment, health care, and general living conditions in the countries. As noted by counsel, the U.S. State Department remarks in one report that the Dominican Republic's national minimum wage does not provide a decent standard of living for a worker and family and another report found that 42 of every 100 Dominicans were poor and 16 of these were living in extreme poverty. The United Nations reports that outside Santo Domingo, emergency services range from extremely limited to nonexistent. One report shows that Venezuela's national minimum wage does not provide a decent stand of living, public hospitals and clinics generally provide a lower level of care than in Caracas and basic supplies may be in short supply or unavailable. The AAO has reviewed the U.S. State Department's most recent travel information which warns: "Venezuela's political leadership maintains a fiery Anti-American discourse, and its political climate is highly polarized and volatile. Violent crime is a serious problem, and the capital city of Caracas has been cited as having one of the highest per capita homicide rates in the world. Kidnappings, assaults, and robberies occur throughout the country; no areas are safe from the high levels of crime." U.S. Department of State: "Country Specific Information – Venezuela," dated March 5, 2012.

The AAO has considered cumulatively all assertions of relocation-related hardship including the applicant's spouse adjusting to a country in which she has not resided for many years; the

advanced age of the applicant and the applicant's spouse; that they first married in 1961, have been remarried since 1982 and have spent approximately 40 years of their lives together; her very close family ties in the United States – particularly to her four children and grandchildren from whom separation now could essentially be permanent; her numerous chronic serious medical conditions for which she requires multiple medications and regular monitoring, and being separated from her trusted U.S. physician(s) and health care regimen; challenging availability of suitable medical care, facilities and medications in the Dominican Republic or Venezuela and other asserted economic, political, and safety concerns; the loss of her U.S. employment and employment-related health insurance and other benefits; the unlikelihood of the 74-year-old applicant and 67-year-old applicant's spouse securing employment in either country sufficient to meet their housing, living, and health-related expenses; and the likely loss of her lawful permanent resident status in the United States.

Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's lawful permanent resident spouse would suffer extreme hardship were she to relocate to the Dominican Republic or Venezuela to be with the applicant. Accordingly, the AAO reverses its previous finding concerning relocation.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Morales*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See, e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Morales at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)

... *Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's permanent resident spouse as a result of the applicant's inadmissibility; his close family ties in the United States including to his three U.S. citizen children, his grandchildren, and his lawful permanent resident child; that nearly 40 years have passed since his 1974 immigration violation; his lack of any criminal history with the exception of that violation. The unfavorable factors are the applicant's misrepresentation/unlawful claim to U.S. citizenship in 1974; his related criminal conviction and deportation from the United States the same year.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the application will be approved.

ORDER: The motion is granted, the prior decision of the AAO is reversed, and the application is approved.