



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

115

DATE: **DEC 08 2012** Office: CALIFORNIA SERVICE CENTER 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 17, 2011.

On appeal, the applicant asserts that her spouse will experience a number of impacts resulting in extreme hardship. *Form I-290B*, received July 19, 2011.

The record includes, but is not limited to, the following documentation: a brief from the applicant; country conditions materials on the Dominican Republic; copy of a DMV medical examination of the applicant's spouse; and medical records pertaining to the applicant. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (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 chapter is inadmissible.

The record indicates that the applicant failed to reveal that she was no longer married to her former spouse when she obtained lawful permanent resident status in the United States in 1982 based on that relationship. As the applicant obtained lawful permanent resident status based on an approved Form I-130 petition pursuant marriage that no longer existed, she misrepresented a material fact in order to gain admission to the United States and a benefit under the Act. On appeal, counsel indicates that the applicant lacked knowledge of her divorce to her prior spouse at the time it occurred, however the applicant has not established that she was in fact unaware that she was no longer married to her former spouse at the time that she entered the United States as a lawful permanent resident based on that relationship. Therefore the applicant has not shown that she was erroneously deemed inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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-I-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.

On appeal, the applicant’s spouse asserts that he would experience extreme hardship upon relocation due to the conditions in the Dominican Republic. The applicant explains that he is a U.S. citizen, that he suffers from high blood pressure and would not be able to get adequate medical care in the Dominican Republic, that he would be a target in the Dominican Republic because of his status as an American, and that he would experience separation impacts from his U.S. resident family members if he relocated to the Dominican Republic.

The record includes country conditions materials on the Dominican Republic, including the country specific information published by the U.S. State Department. These materials discuss the social, economic, political and security features of life in the Dominican Republic, indicating the country has a significantly lower standard of living than the United States. Although it is not clear that the applicant’s spouse would be unable to receive adequate medical treatment for any medical condition, the AAO finds the submitted documents sufficient to establish that the applicant’s spouse would experience an uncommon physical impact if he were to relocate to the Dominican Republic, and the AAO will consider this factor when aggregating the impacts on the applicant’s spouse due to relocation.

The applicant asserts that her spouse has “severe high blood pressure” and cites to a copy of a Department of Motor Vehicles medical exam, noting high blood pressure. This document was part of

an application process for a state DMV, and involved the applicant's spouse self-recording answers on the form. It does not contain any medical diagnosis of a medical condition, nor does it provide any information about the nature or severity of any such condition, or provide a prognosis for future treatment. It is not a medical record; it is a part of a driving record. The record does not contain any other documentation which might corroborate the applicant's assertion that her spouse suffers from high blood pressure.

The applicant does not clearly articulate what other hardships, if any, will impact her spouse upon relocation. When the hardship factors discussed above are weighed in the aggregate, the AAO does not find them to rise above the hardships commonly experienced upon relocation to a degree of extreme hardship.

With regard to hardship upon separation, the applicant states that she will experience extreme hardship in the Dominican Republic, and notes that she and her spouse have three children. The record contains very little evidence in support of the applicant's assertions. As discussed above, there is no documentation which corroborates that the applicant's spouse suffers from any medical condition. Although hardship to an applicant is not considered when evaluating hardship impacts to a qualifying relative, if the hardship to an applicant is such that it would impact a qualifying relative then it may be considered as an indirect hardship factor. The record does contain medical documents pertaining to the applicant's spouse, including a page of handwritten examination notes, a mental health diagnosis sheet and medical release for mental health records. These documents indicate that the applicant's spouse does suffer from Anxiety, Depression, obesity and knee pain. However, the documents are not sufficiently probative to establish the extent and degree to which these conditions impact her daily life and ability to function. Thus, the record does not contain sufficient evidence to demonstrate that the applicant would experience impacts to a degree resulting in substantial additional hardship to her spouse.

When the hardship factors upon separation are considered in the aggregate, the AAO does not find them to rise above the common impacts to a degree constituting extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse might experience physical and acculturation impacts upon relocation. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *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.