



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

[REDACTED]

H5

DATE: **DEC 20 2012**

Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE: [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, or a request for a fee waiver. 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States 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 an immigration benefit through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and 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).

The field office director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of the Field Office Director* dated November 10, 2011.

On appeal, the applicant, through counsel, claims that the applicant's spouse would face extreme hardship should the applicant's waiver application be denied. *See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion* and *Appeal Brief*. Specifically, counsel maintains that the director failed to properly consider the impact of the applicant's spouse's medical condition. *See Appeal Brief*.

The record contains, in relevant part, the applicant's appeal brief, the Form I-601, Application for Waiver of Grounds of Inadmissibility, and the documentation submitted in support of the applicant's claim including the applicant's and his spouse's affidavits, medical and health insurance records, employment documentation, and affidavits from friends and family.

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

- (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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now Secretary of Homeland Security (the Secretary)] may, in the discretion of the [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 [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 reflects that the applicant was found to be inadmissible because he misrepresented his marital status in a non-immigrant visa application in 2010. Although the applicant claims that the misrepresentation was a result of an error by the preparer of his application, he does not dispute that he swore to the consular officer that the information on his application was true and correct during his visa interview. The fact that the applicant pursued his visa application through a travel agent does not serve to insulate him from liability for misrepresentations made by the agent. Even assuming there was no intent to deceive, an applicant is inadmissible if the misrepresentation was willful and material. *Matter of Kai Hing Hui*, 15 I & N Dec. 288, 290 (BIA 1975). The AAO finds that the applicant made a material misrepresentation regarding his marital status, which was relevant to his eligibility for admission as a non-immigrant to the United States. The applicant is therefore inadmissible as charged under section 212(a)(6)C)(i) of the Act.

The Act provides that a waiver of inadmissibility, under section 212(i) is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's case is based on a claim of extreme hardship to the applicant's spouse. It is noted that Congress did not include hardship to an applicant's children, or step-children, as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's spouse's children will not be separately considered, except as it may affect the applicant's qualifying relatives.

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 (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 is a U.S. citizen, originally from the Dominican Republic, who has been residing in the United States since 1991. She was previously married and has three children. She married the applicant in 2010. The applicant's spouse states that she relies on her husband, the applicant, for financial and emotional support. *See Affidavit of Applicant's Spouse*. Additionally, the applicant's spouse states that she suffers from labile hypertension, a condition that results in fluctuations of blood pressure and that is due to rising anxiety. *Id.* The applicant claims that his spouse's medical bills are covered by health insurance obtained through his work. The applicant also claims that his spouse would be unable to financially support the family without his employment income.

The evidence in the record does not demonstrate that the applicant's spouse would face extreme hardship due to the couple's separation. The record indicates that the applicant's spouse suffers from labile hypertension, a condition worsened by increased anxiety. The applicant claims that his spouse could not afford any medical treatment without his health insurance. This evidence indicates that the applicant's spouse would face difficulties, especially when transitioning from reliance on the applicant's health insurance, but it does not demonstrate that the applicant's spouse's circumstances are different or more severe than those experienced by any other individual in her situation. There is also no evidence that the applicant's spouse's financial situation is different than that of individuals in similar circumstances. The applicant's spouse's concerns and hardships are common among individuals in her circumstances and do not rise to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse due to the couple's separation as required under section 212(a)(9)(B)(v) of the Act.

With regards to relocation, the evidence in the record does not establish that medical care for the applicant's spouse's condition is unavailable in the Dominican Republic. Moreover, the applicant and his spouse state that the couple's separation and the applicant's immigration situation is a major contributing factor to the applicant's spouse's anxiety and medical condition. Relocation to the Dominican Republic would result in the couple's reunification. The applicant has not established that relocation to the Dominican Republic would result in extreme hardship to his spouse. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living [] and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). The applicant's spouse is a native of the Dominican Republic. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. at 886. To relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch, supra*.

As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.