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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H15

[REDACTED]

DATE: JUL 20 2012

OFFICE: NEWARK, NEW JERSEY

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 Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 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 having procured admission by willful 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, through counsel, does not contest this finding of inadmissibility on appeal. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife as well as his biological children and stepson in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 30, 2010.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) denied the applicant's waiver application as an erroneous conclusion of fact as it only considered the financial hardship that the applicant's qualifying relative would suffer and not the entire documentary record. *See Form I-290B, Notice of Appeal or Motion*, dated July 22, 2010.

The record includes, but is not limited to: briefs from counsel; letters of support; mental health evaluations; identity, medical, financial and employment documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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.

...

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

The Field Office Director found the applicant inadmissible for attempting to procure admission to the United States by presenting a photo-substituted nonimmigrant visa and Dominican passport that did not belong to him on June 3, 1996. The applicant, however, was admitted on July 7, 2006, as a

B-2 visitor, and was permitted to change his status to an F-1 student on May 21, 2007. The record reflects that he has remained in the United States to date. The record also reflects that when he applied for his B-2 and F-1 visas, the applicant failed to disclose that he was refused entry in 1996 for presenting an altered visa and fraudulent passport. The record supports the finding, and the AAO concurs that the misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or the applicant's biological and stepchildren 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. 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).

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.

Counsel contends that the applicant’s spouse will suffer extreme psychological, emotional, financial, and physical hardship in the applicant’s absence as: the spouse has an ongoing relationship with a treating mental health professional; the applicant is her only source of emotional strength; she needs the applicant and her family to assist with her severe mental and emotional illness; she is unemployed, and consequently, completely dependent on the applicant for financial support and sustenance; and she is unable to get a financial loan as she defaulted on a student loan. Additionally, the spouse discusses her courtship with the applicant; her feelings for her stepdaughters and the reasons why she wants a “perfect family”; the ways in which the applicant provides her emotional support and serves as a positive influence on her son and assists with their finances; and how the applicant’s immigration status has affected her physical and emotional health.

The AAO notes that the applicant’s spouse may experience some emotional, physical, and financial hardship because of the applicant’s absence from the United States. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally

experienced by qualifying family members of inadmissible individuals. The record is sufficient to establish that the spouse is being treated for Acute Stress Disorder and has recently been diagnosed with Major Depression by [REDACTED]. While the AAO acknowledges that the spouse is [REDACTED] patient, the AAO notes that [REDACTED] letter dated July 19, 2010, is a general statement and does not include any specific indicators as to the treatment that the spouse is receiving or the necessity of the applicant's participation in that treatment for Major Depression. Moreover, the AAO notes that the mental health evaluations and medical letters in the evidence do not indicate any specific reference to the spouse having suicidal thoughts as referenced in counsel's appellate brief. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). And, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). From the evidence submitted, the AAO is unable to determine the severity of the spouse's condition or the course of treatment required.

Further, the AAO notes that the record is sufficient to establish that the spouse and the applicant have financial debt, including the spouse's student loan in arrears. And, the record establishes that the applicant has served as the primary breadwinner in the capacity of Office Manager for T.I.G. Marketing, Inc., since November 2009, and that the spouse is currently unemployed. However, the record also establishes that prior to coming to the United States, the applicant "managed to obtain a very good job as an accountant ..." *Letter of Support from Richard de Jesus Vallejo*, notarized June 19, 2010. Although counsel references labor conditions in the Dominican Republic, the AAO notes that counsel's reference is a general discussion that does not specifically address the current labor market for accountants or the applicant's inability to contribute to the spouse's household if he were to return to the Dominican Republic because of his inadmissibility.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Counsel also contends that the applicant's spouse will suffer extreme emotional and financial hardship if the spouse were to relocate with the applicant to the Dominican Republic as: she has no option but to relocate with the applicant; suitable medical care is unavailable to treat her mental health needs; she relies on her family to assist with her mental state; country conditions suggest that prosperity remains a dream for most Dominicans; and it would be a challenge for her to find a good job. Counsel further contends that the applicant's and his spouse's children will suffer extreme hardship as: their educational opportunities will be disrupted; they will have fewer opportunities for advancement in higher education; and they will be forced to seek employment rather than an education as required by the family's financial situation. Additionally, the spouse contends that the applicant's daughters would not want to relocate with the applicant and that she would be unable to afford their education and everyday expenses. Further, the spouse's mother indicates that the

spouse does not have any knowledge of the Dominican Republic and she does not have any property there.

The record establishes that the applicant's spouse is a native of the Dominican Republic who spent some time there pursuing a higher education. And, although the record reflects that she does not have financial ties any longer, the record does not include any evidence whether she continues to maintain familial and social ties. Also, the record does not include any specific country conditions information concerning educational opportunities, medical care, or access to mental health facilities; only a general statement from counsel that the applicant's and his spouse's children would have to forego educational opportunities and that many hospitals do not have a psychiatric department to address the spouse's mental health issues. As mentioned previously, the unsupported assertions of counsel do not constitute evidence. The record thus fails to establish that the applicant's spouse, a native of the Dominican Republic, will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, 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. 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.