

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

DATE: JUL 24 2012

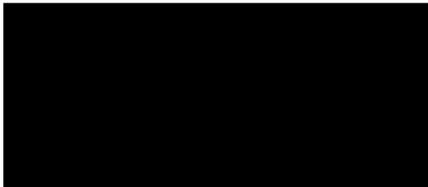
Office: NEWARK, NJ

FILE: 

IN RE: 

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:



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 Khew
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 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 sought an immigration benefit under the Act 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. 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 U.S. citizen spouse and children.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated September 6, 2011.

On appeal, counsel asserts that the director erred in denying the applicant's waiver and failed to properly conduct a meaningful review of whether the applicant's wife would suffer extreme hardship should the applicant be removed. Counsel further asserts that the director also failed to balance the equities by not giving positive factors sufficient weight. *See counsel's brief*, dated October 5, 2011.

The evidence of record includes, but is not limited to: counsel's brief, statements from the applicant and his spouse, medical and psychological reports for the applicant's family, financial and utility documents, character reference letters for the applicant, family photographs, and identification and relationship documents. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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 [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 indicates that the applicant submitted fraudulent documents and provided false information in support of his petition and adjustment application. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought an immigration benefit under the Act through fraud or misrepresentation. Counsel does not contest the applicant's inadmissibility.

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. 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.

The applicant’s qualifying relative is his spouse, who is a U.S. citizen. The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s 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 children will not be separately considered, except as it may affect the applicant’s spouse.

The AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant and his spouse have been together since the applicant’s spouse was 17 years old. Counsel asserts that it would be “a great physical and emotional burden” for the applicant’s spouse to raise their three children independently after relying on the applicant for so many years. Additionally, the applicant’s spouse will not be able to afford the children’s tuition and other expenses if the applicant is deported. The applicant is a self-employed handyman and his spouse is a school-bus driver. Counsel asserts that the applicant’s spouse is able to work because the applicant prepares their children for school in the morning and picks them up in the afternoon. He also cooks and shops for groceries. Counsel states that continuing to work while raising three children would be an extreme hardship for the

applicant's spouse. Counsel states the applicant's and his spouse's family members would not be a source of financial support for the applicant's spouse.

Counsel also asserts that "[m]oving to the Dominican Republic would be a near impossibility for [the applicant's spouse] due to the special medical needs of her children." Counsel states that the applicant's spouse's quality of life and living conditions in the Dominican Republic were very poor, and their children would receive "substantially inferior educational opportunities." The applicant's daughter has epilepsy, and one of his sons has had behavioral and academic difficulties. Counsel asserts that the applicant's son's special educational needs and behavioral problems "would most likely become exacerbated upon entering ... a new environment," should the family relocate. In addition to her three children, the applicant's spouse's mother and siblings live in the United States. She is not close to her father and half-sibling who live in the Dominican Republic. Counsel also points out the applicant's spouse's safety concerns for the children, should they relocate.

The applicant's spouse states that the applicant allows her the flexibility she needs to be able to work. Although her sisters and mother live in the United States, they are not near enough to be able to help her. Their children are very close to the applicant and they show "signs of severe distress at the thought of him leaving."

Evidence in the record reveals that the applicant's spouse works between 35 and 56 hours a week and earns 12 dollars an hour. The applicant indicates in his 2010 affidavit that he works as a construction assistant and earns between 10,000 and 20,000 dollars annually, receiving cash payments.

Medical evidence shows that the couple's daughter has been diagnosed with epilepsy and requires ongoing treatments. She takes a medication to control her seizures. A developmental pediatric report indicates that the couple's son has inattention problems and mild difficulties in his verbal analogies. The report recommends academic tutoring and participation in extracurricular activities. A 2009 psychosocial evaluation of the family by a licensed clinical social worker indicates that the applicant's spouse feels anxious and depressed, has difficulty sleeping and experiences headaches. She states that the couple's children are "at risk of a wide range of psychological problems" if they relocate to the Dominican Republic. According to the social worker, the applicant's spouse would have difficulty in the Dominican Republic accessing "the specialized medical care that their daughter needs." She further states that medicines are "often either unavailable or prohibitively expensive" in the Dominican Republic and therefore, their daughter's health would be at risk.

Letters from friends and the applicant's pastor attest to his good character and the loving relationship between the applicant and his spouse.

Having reviewed the preceding evidence, the AAO finds that, considered in the aggregate, the applicant's spouse would experience extreme hardship if the waiver application is denied and she

relocates to the Dominican Republic. In reaching this conclusion, we note that the couple's daughter has a medical condition that requires ongoing treatment. The applicant's spouse is also concerned about their son's special educational needs and their children's quality of life. We recognize that the hardship resulting from the disruption of the children's care and current setting would cause the applicant's spouse hardship. The AAO further notes that the applicant's spouse is employed and has strong family ties in the United States. With respect to her concern for their safety in the Dominican Republic, we note that the Department of State published Country Specific Information, updated on June 22, 2012, indicating that U.S. citizens residing in private homes have been the victims of robberies; some resulted in "fatal violence." See http://travel.state.gov/travel/cis_pa_tw/cis/cis_1103.html.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she remains in the United States. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, with respect to counsel's and the applicant's spouse's claims that she would be unable to support her family without the applicant's income, the record does not show the total household expenses and the applicant's financial contribution toward their expenses. The record is also unclear about whether the applicant and his spouse receive rent or financial assistance from an individual who lives with them. Furthermore, the applicant provides no evidence that he would be unable to obtain gainful employment in the Dominican Republic. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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)). Similarly, without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *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). Without supporting evidence, the AAO cannot conclude that the applicant's spouse would experience extreme financial hardship on separation.

Moreover, although the family's December 2009 psychosocial report by a licensed social worker indicates that the applicant's spouse feels anxious and depressed, there is no evidence in the record that she sought treatment or received counseling for depression since the evaluation. Similarly, the record does not demonstrate that the couple's children received counseling after the initial evaluation. Therefore, the AAO is unable to determine whether the applicant's spouse's emotional hardship would be extreme, should she remain in the United States. We acknowledge the difficulties the applicant's spouse may encounter working as a single parent,

however, note that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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. 880, 886 (BIA 1994). Furthermore, 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*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not established statutory eligibility for a waiver of his inadmissibility under section 212(i) of the Act. As the applicant has not established extreme hardship to his qualifying family member if she lived in the United States, 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.