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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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



H5

Date: **JUN 18 2012**

Office: BOSTON, MA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

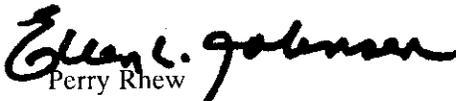
ON BEHALF OF APPLICANT:



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 Field Office Director, Boston, Massachusetts. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated May 13, 2010.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering both of the couple's children have special needs and country conditions in the Dominican Republic.

The record contains, *inter alia*: an affidavit from the applicant's husband, Mr. Soto; letters from [REDACTED] psychologist; a letter from the applicant's psychologist; numerous letters of support; letters from the couple's children's school; several letters from Children's Hospital; letters from a social worker and a psychiatrist; a copy of the applicant's public housing lease; a letter from [REDACTED] employer; a copy of the U.S. Department of State's Human Rights Report for the Dominican Republic and other background materials; a copy of the couple's tax return; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel concedes in his brief, that in April 2000, the applicant entered the United States by using a fraudulent passport. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED], states that he has lived in the United States since 1986. In addition, [REDACTED] contends his wife is seeing a therapist for depression and he would worry about her condition worsening in the Dominican Republic. Moreover, according to [REDACTED] both of their sons have developmental problems for which they receive medical treatment. [REDACTED] contends that their son, [REDACTED] has been diagnosed with Attention Hyperactivity Distractibility Disorder for which he takes medication daily, and sees a psychiatrist as well as a social worker on a weekly basis. [REDACTED] contends that the couple's son, [REDACTED], has delayed speech problems and is receiving learning intervention therapy. [REDACTED] fears the children would not receive adequate treatment in the Dominican Republic. Furthermore, [REDACTED] contends he cannot return to the Dominican Republic, where he was born. He states that it is not a safe place and that there is a lot of violence, corruption, kidnappings, and theft. He also fears being unable to find employment in the Dominican Republic.

After a careful review of the entire record, the AAO finds that if [REDACTED] remained in the United States without his wife, he would suffer extreme hardship. The record contains a letter from [REDACTED] psychologist stating that he is being treated for significant symptoms of anxiety and depression. The psychologist states that [REDACTED] has been in individual and group therapy since December 2009 and that he takes two prescription medications to control his anxiety symptoms. According to the psychologist, [REDACTED] recently had a panic attack and thought he was having a heart attack. Several letters in the record, including from [REDACTED]'s mother, brother, sister, and a friend, describe how [REDACTED] was thirteen years old when his father was brutally murdered, leaving [REDACTED] insecure and unable to trust anyone. According to [REDACTED]'s mother, there were times when he would pull out his hair. The letters from the psychologist and [REDACTED]'s family members stress the importance of [REDACTED] being with his wife and the likelihood that separation from his wife will cause him even more psychological problems. In addition, there is ample documentation in the record corroborating [REDACTED] claims about his sons' special needs. The record shows that Ismael has been diagnosed with ADHD and mild developmental disabilities for which he receives psychological services. A social worker describes the severity of [REDACTED] inattention and impulsivity, making his behavior difficult to manage, and that the applicant works very hard to handle his behavior appropriately. In addition, a letter from Children's Hospital states that [REDACTED] has been working through the traumatizing effects of a recent sexual assault. The record also contains documentation from Rafael's school indicating he qualifies for special education due to his

problems with communication. According to numerous health care professionals at Children's Hospital, both children need consistent and predictable support from their parents and the applicant is the primary nurturing figure for both children. The letters specify that if the children remain in the United States without their mother, their problems would become significantly worse, causing hardship to [REDACTED] who would be a single parent to two children with special needs. Furthermore, the record contains a letter from the applicant's psychologist, corroborating [REDACTED]'s claim that his wife suffers from depression. According to the applicant's psychologist, the applicant was severely abused in the Dominican Republic and fears returning there. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] returned to the Dominican Republic to be with his wife, he would experience extreme hardship. As stated above, [REDACTED] is being treated for anxiety and depression. In addition, his children have special needs and receive treatment and intervention on a regular basis. The letters from Children's Hospital specify that if the children moved to the Dominican Republic, it would be very difficult for them to receive the same services they receive in the United States, and their developmental prognosis would be markedly worse, causing hardship to [REDACTED]. The AAO recognizes that relocating to the Dominican Republic would disrupt the continuity of their health care and takes administrative notice that the quality of medical care varies greatly outside major cities in the Dominican Republic and that the availability of prescription drugs vary depending on the location. *U.S. Department of State, Country Specific Information, Dominican Republic*, dated April 12, 2012. With respect to [REDACTED] fears about safety in the Dominican Republic, the U.S. Department of State recognizes that crime continues to be a problem throughout the country. *Id.* In addition, the AAO recognizes that [REDACTED] has lived in the United States for the past twenty-six years, almost his entire adulthood. [REDACTED] would need to readjust to living in the Dominican Republic, a difficult situation made even more complicated by his mental health problems and his children's special needs. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen husband and two U.S. citizen children; the extreme hardship to the applicant's husband and children if she were refused admission; letters of support in the record describing the applicant as a loving wife and mother who wishes nothing but the best for her family; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.