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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 20 2012 Office: SANTO DOMINGO, DOMINICAN REPUBLIC 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:



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, Santo Domingo, Dominican Republic. 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 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), for attempting to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen and the applicant seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated May 10, 2010.

On appeal, counsel asserts that the field office director abused her discretion and the applicant's spouse is suffering extreme hardship. *Form I-290B*, dated June 8, 2010.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements, the applicant's statement, an employer letter, statements from family and friends, financial records and country conditions information on the Dominican Republic. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to enter the United States on May 27, 2001 with a counterfeit ADIT stamp in his passport to falsely show that he was a lawful permanent resident of the United States. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact. He does not contest this finding on appeal.

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

- (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 that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bars imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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 states that the applicant's spouse contracted dengue fever while living in the Dominican Republic and was in the hospital for a week; she is at a high risk of reinfection as she would reside in an area where rain water is collected in barrels which creates a breeding ground for mosquitos; she also suffered from numerous parasites from polluted water and unsanitary conditions; she would not have access to proper medical care; she would be leaving her developing career and close-knit family to relocate to a poverty-stricken society; she has no job prospects in the Dominican Republic; she would not have the resources to visit her family in the United States; she would have to abandon her retirement fund and health care benefits; she is concerned about her safety and was the victim of multiple crimes, including pickpocketing, robbery and assault, during her stay in the Dominican Republic; she experienced frequent sexual harassment and was effectively trapped in her residence after dark due to fear of gender-related violence; and there is a severe economic crisis in the Dominican Republic.

The applicant's spouse states that she knows the kind of life she would have to live in the Dominican Republic without the safety, medical care, financial stability, career opportunities and emotional support from family; if she and the applicant have children, the children would suffer due to the living conditions; she is very concerned for her safety as Americans are targeted and she was a victim of multiple crimes; she received verbal harassment due to her skin color and she was regularly sexually harassed; her mental health was affected due her issues there; she had medical issues while living there; she has lived most of her life in Iowa near her family; she is very close to her family; she works with mentally and learning disabled children and she would have to break these relationships; she does not want to forsake her committee chair position for the Light the Night Walk; her dreams and goals related to working with learning disabled children are unattainable in the Dominican Republic; she has a large amount of debt that she needs to pay off and she would have to default; and her future children would have fewer educational opportunities. The record includes a letter from the applicant's spouse's employer reflecting that she develops treatment plans for adults and children with mental health diagnoses. The record includes evidence of student loans, a car payment, car insurance and various other bills. The country conditions information reflects

that sexual harassment in the workplace remains a problem and that women experience discrimination in the Dominican Republic. The evidence provided reflects that American citizens are considered attractive targets for criminal activity and should maintain a low profile to avoid becoming victims of violence or crime.

The AAO notes that applicant's spouse's employment and medical claims are not supported with documentary evidence. However, the record reflects that the applicant's spouse has close family ties in the United States, and she previously resided in the Dominican Republic and her nationality- and gender-related claims are supported by country conditions information. Considering the hardship factors mentioned, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship if she resided in the Dominican Republic.

Counsel states that the applicant and his spouse cannot begin a family while they remain separated; the applicant's spouse suffers from depression and anxiety, which are increasing due to separation from the applicant; her ability to perform her job is being affected; she is attempting to reacclimatize to her home country after an extended absence without the applicant, who has been her closest physical and emotional support for years; she works in human services where it is imperative that she remain emotionally stable to assist those with mental disorders; she has student loans of \$21,000, a car loan of \$8,000 and a credit card bill; and she can barely afford to call the applicant and pay for airfare to visit him after making her payments.

The applicant's spouse states that she is lost without the applicant; she is having increasing difficulty in concentrating on her work; she works in human services, which is a very stressful and emotionally draining job; the applicant is her best support system; her job performance has suffered; and the applicant would be gainfully employed by her brother-in-law and they could quickly pay off her debts, save for retirement, further her education and start their family together. The applicant's spouse details her closeness to the applicant and the support he provides to her. She states that she is struggling to hold together a long-distance relationship. As mentioned, the record includes a letter from the applicant's spouse's employer reflecting that she develops treatment plans for adults and children with mental health diagnoses. The record includes evidence of student loans, a car payment, car insurance, various other bills and plane ticket expenses. The applicant's spouse's brother-in-law states that he owns a landscaping company and he would hire the applicant.

The record reflects that the applicant's spouse would experience emotional difficulty without the applicant. The record does not include supporting documentation to establish the severity of her emotional difficulty. Although the record includes evidence of financial obligations for the applicant's spouse, the record is not clear as to whether she is unable to meet these obligations and the salary that the applicant would receive in the United States. The record does not include sufficient documentation to establish she is experiencing hardship in her employment or of any other form of hardship if she remains separated from the applicant. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *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)). The AAO finds that the record lacks sufficient documentary

evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's wife would suffer extreme hardship if she remained in the United States.

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 in 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.