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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
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**U.S. Citizenship  
and Immigration  
Services**

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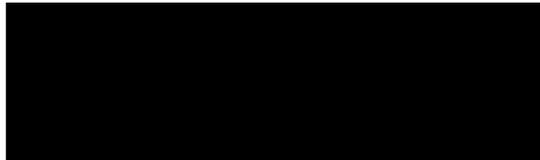
DATE: **MAR 16 2012** OFFICE: NEW YORK, NEW YORK

File:

IN RE: Applicant:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 District Director, New York, New York 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and children.

The District 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 District Director*, dated September 9, 2009.

On appeal, counsel asserts extreme hardship to the applicant's spouse of an economic, medical/health-related, and emotional/psychological nature. See *Counsel's Letter*, dated October 8, 2009.

The record contains, but is not limited to: Forms I-601, I-485 and denial of each; hardship letter; employment letters; medical/health-related letters and records; psychosocial analysis; church letters; school letters and certificates; printouts of human rights report and health situation/trends; marriage, divorce, and birth records; records pertaining to applicant's criminal conviction; records pertaining to applicant's inadmissibility including his signed sworn statement; and Form I-130. The entire record was reviewed and considered in rendering a decision on the 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.

The record reflects that on February 14, 2000 the applicant filed a Form I-90 under another individual's name. On or about March 28, 2000, the applicant obtained an I-551 resident stamp in a passport in the other individual's name. On September 9, 2000, the applicant presented the passport and I-551 stamp, assuming the other individual's identity in order to gain entrance into the United States as a lawful permanent resident. The applicant did not disclose his true identity until July 14, 2009, during an adjustment of status interview. The District Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

The record supports this finding, the applicant does not dispute inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The record reflects that the applicant was convicted of Attempted Criminal Possession of Forgery Devices under NYPL section 110-170.40. The District Director determined that this constitutes a conviction for a crime involving moral turpitude and found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest these findings on appeal. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

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

- (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 waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 record reflects that the applicant's spouse is a 44-year-old native of the Dominican Republic and citizen of the United States. She states that the applicant is a great person of kind character and an exemplary father to their minor child, as well as to her adult daughter and his adult son

from previous relationships. See *Hardship Affidavit*, dated April 2, 2009. The applicant's spouse states that she would be unable to support her daughters financially without her husband's financial contribution. *Id.* On *Form I-864*, Affidavit of Support, dated February 7, 2009, the applicant's spouse indicated that she could support the applicant financially and listed her income and her adult daughter's for a combined household income of \$39,712. *Tax Returns, Earnings Statements, Form W-2 Wage and Tax Statements, and Employment Letters*, various dates were submitted in support. The applicant's total gross income is listed as \$6,507 on his *2008 Federal Tax Return*, dated February 25, 2009. In an *Employment Verification Letter*, dated September 22, 2009, [REDACTED] asserts that the applicant has been a self-employed consultant to the company from May to September 2009, earning \$4,800 at an hourly rate of \$25. In terms of expenses, in a *Letter from* [REDACTED] dated March 11, 2009, [REDACTED] asserts that monthly rent for the applicant, his spouse, her adult daughter and their minor daughter is \$370. A complete documentary budget of expenses has not been submitted. While the AAO recognizes that the applicant's removal would result in some reduction in monthly income to the applicant's spouse, the evidence in the record is insufficient to establish that the applicant would be unable to support herself or meet her financial obligations in his absence.

The applicant's spouse states that she has "always had chronic medical problems including asthma and osteoarthritis" for which she takes medication. See *Hardship Affidavit*, dated April 2, 2009. Two *Letters from* [REDACTED] dated March 13, 2009 and October 1, 2009, were submitted, the earlier including a "*Problem List as of 03/12/2009*" which reflect ten office visits for a variety of symptoms between September 2004 and March 2009. The evidence does not show the degree to which these conditions impact the applicant's spouse or demonstrate that she would be unable to function or otherwise experience uncommon hardship in the applicant's absence.

In a *Psychosocial Assessment*, dated September 20, 2009, [REDACTED] asserts that the applicant's spouse reports being very anxious and sad at the prospects of her husband's removal and "has started outpatient mental health treatment." *Id.* [REDACTED] asserts that if her husband is removed, the applicant's spouse "in all likelihood will exhibit suicidal ideations." *Id.* In a handwritten *Psychiatrist's Letter*, dated September 24, 2009, [REDACTED] asserts that the applicant's spouse is depressed, anxious, stressed by her husband's immigration status and is taking Zoloft daily and Ambien at bedtime for sleep. In a [REDACTED] *Letter*, dated September 25, 2009, [REDACTED] asserts that the applicant's spouse has been receiving psychiatric services at the facility since June 2009 and believes if the applicant is removed, his spouse "may experience such immense trauma that her health may rapidly deteriorate as there is a direct link between mental stress and health." While the AAO has considered all medical and clinical documents submitted and recognizes that the applicant's spouse may experience difficulty as a result of separation from the applicant, it finds that the evidence does not establish that the applicant's spouse would suffer medical or psychological/emotional hardship in the applicant's absence that is uncommon or extreme.

Assertions have been made concerning hardship to the applicant's children. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the

applicant's qualifying relative – here the applicant's spouse. The applicant's spouse states that if separated from her husband "the children would suffer a great deal emotionally because they have grown accustomed to being with their father." See *Hardship Affidavit*, dated April 2, 2009. The record shows that the applicant's stepdaughter, [REDACTED] is currently 24-years-old and his son, [REDACTED] is a 20-year-old college student living with his mother. With regard to the applicant's only minor child, [REDACTED] asserts that [REDACTED] (now 15-years-old) is normally a well-adjusted adolescent but has been under an overwhelming amount of stress due to the prospect of her father's deportation. See *Letter from [REDACTED]* dated September 28, 2009. [REDACTED] asserts that this is negatively affecting [REDACTED] physical and mental health though she does not elaborate as to any symptoms. *Id.* [REDACTED] asserts that [REDACTED] is very sad about the applicant's possible removal and that she won't have anyone at home when she comes home from school. See *Psychosocial Assessment*, dated September 20, 2009. [REDACTED] asserts that [REDACTED] expressed concern about being all alone if something happens to her mom and that she reported being unable to sleep at night and having trouble focusing at school due to preoccupation about her father's immigration situation. *Id.* The applicant's spouse states that her husband helps her support the children emotionally. See *Hardship Affidavit*, dated April 2, 2009. While the AAO recognizes that the applicant appears to be a very supportive father whom his spouse and children will miss in the event of his removal, the applicant has failed to establish that separation-related hardships to the applicant's children would be uncommon or extreme such that they would cause extreme hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, counsel asserts that the applicant's spouse's medical needs would not be met in the Dominican Republic "without substantial amount of money, which she does not have." See *Counsel's Letter*, dated October 8, 2009. The AAO has reviewed a World Health Organization print-out called "Health Situation Analysis and Trends Summary," undated, submitted by the applicant. While the printout asserts that the "private sector finances the majority of health costs – 55% come directly from households, 75% of which have no insurance nor pre-payment mechanisms," the evidence in the record does not establish that the applicant's spouse would be unable to secure or afford healthcare in the Dominican Republic should she choose to relocate to be with the applicant. Counsel asserts that "unemployment and lack of job opportunities in the Dominican Republic would make it unlikely for the applicant to continue to maintain his economic assistance to the wife and daughter." See *Counsel's Letter*, dated October 8, 2009. The evidence in the record does not establish that the applicant or his spouse would be unable to secure employment or support themselves in the Dominican Republic.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her lengthy residence in the United States and close familial ties – particularly to her eldest daughter. When considered in the aggregate along with her present U.S. employment and stated health-related, emotional and economic concerns, the AAO finds that the

evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to the Dominican Republic to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 relatives in this case.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.