

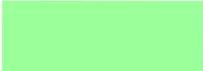


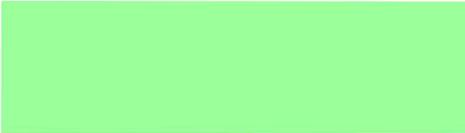
U.S. Citizenship  
and Immigration  
Services

(b)(6)



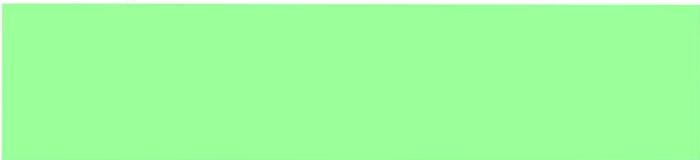
Date: **APR 09 2013** Office: PROVIDENCE, RHODE ISLAND

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(d)(11)

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Providence, Rhode Island, and was subsequently appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The record reflects that the applicant, a native and citizen of the Dominican Republic, 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 procuring admission to the United States through fraud or misrepresentation. The record reflects that the applicant is also inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of the law. 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 seeks a waiver of inadmissibility pursuant to sections 212(d)(11) and 212(i) of the Act, 8 U.S.C. §§ 1182(d)(11) and 1182(i), in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident son.

The Field Office Director found that the applicant failed to establish that her spouse would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of Field Office Director*, dated December 21, 2011.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established as required by the Act. *See Decision of the AAO*, dated January 8, 2013. Consequently, the appeal was dismissed. *Id.*

On motion, counsel presented evidence of psychological hardship to the applicant's spouse and additional evidence of the medical condition of the applicant's son. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has submitted new documentary evidence to support her claim, the motion to reopen and reconsider will be granted.

The record contains the following documentation: a statement by the applicant's spouse included with the Form I-290B, Notice of Appeal or Motion (Form I-290B); a psychological report for the applicant's spouse; medical documentation for the applicant's son; and documentation submitted in support of the applicant's initial Form I-290B and Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601). The entire record was reviewed and considered in arriving at a decision on the motion.

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 Attorney General [now the 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.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 v. INS*, 138 F.3d 1292, 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 spouse contends that he is experiencing anxiety and emotional hardship as a result of his possible separation from the applicant, and he has started treatment with a clinical mental health counselor. The record includes a report from a licensed clinical mental health counselor, who states that the applicant’s spouse was referred to her by the applicant’s spouse’s physician and that the applicant’s spouse is “quite stressed and anxious” about the pending decision on the applicant’s immigration status; he is “unprepared to face life without [the applicant],” who has been his primary emotional support since his mother’s death. The report indicates that the diagnosis for the applicant’s spouse’s psychological condition is adjustment disorder with mixed anxiety and depressed mood and that the recommended treatment for the applicant’s spouse, to which he agreed, is individual therapy two times per month.

The applicant’s spouse further states that he will suffer extreme hardship if the applicant’s waiver is not approved as a result of the medical hardships being suffered by the applicant’s son, his stepson. As stated above, under 212(i) of the Act, children are not deemed to be qualifying relatives, and a child’s hardship will only be considered to be a factor if it affects whether a qualifying relative

experiences extreme hardship. The record indicates that the applicant's son suffers from epilepsy and attention deficit hyperactivity disorder (ADHD), and the applicant has provided medical evidence to confirm these conditions. On motion, counsel submitted additional medical evidence indicating that the applicant's son has a history of complex partial seizure activity and ADHD and that he was admitted to the hospital on August 27, 2012, following two epileptic seizures. According to the hospital report, the applicant's son has a history of Todd's paralysis, and he was admitted to the hospital due to "increased seizure frequency." The applicant's son is a lawful permanent resident of the United States, and he achieved this status based on a Form I-130 filed on his behalf by the applicant's spouse, his stepfather. The applicant's spouse states that the medical conditions of his stepson are a cause for concern to him, as he works full-time and would be unable to provide the proper care for his stepson in the absence of the applicant.

With respect to the financial hardship the applicant's spouse would experience if they were separated, the record establishes that he has been employed full-time at the [REDACTED] since June 27, 2007. The record includes evidence of his financial obligations, such as his monthly residential rent. On motion, the applicant's spouse states that the applicant does not make any significant financial contribution to the household, though she does provide significant support by taking care of their son, and that the applicant's spouse would be unable to continue his full-time employment if he were required to provide the care necessary for his stepson.

The record establishes that if the waiver application were denied, the applicant's spouse would experience psychological and financial hardship and that he would experience additional financial and emotional hardship as a result of the hardships related to the medical conditions of his stepson. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

Regarding relocation, the AAO previously determined that the applicant's spouse would suffer hardship if he were to relocate to the Dominican Republic. *See Decision of the AAO*, dated January 8, 2013. The AAO noted that the record demonstrates that the applicant's spouse has continuously resided in the United States for over 25 years and maintains close relationships with his U.S. citizen family members. The AAO further noted that the applicant's spouse immigrated at age seven; that he has a close relationship with his U.S. citizen brothers and sister, as well as his daughter, who all live in Rhode Island; that it would be difficult to support his daughter's educational pursuits and financial needs as well as to pay the expenses of travel to visit her and his siblings; and that he would lose his job at the [REDACTED] and have difficulty obtaining a job in the Dominican Republic, given its terrible economy. Additionally, the U.S. Department of State's current travel advisory states: "Foreign tourists are often considered attractive targets for criminal activity and you should maintain a low profile to avoid becoming a victim of violence or crime. In dealing with local police, you should be aware that the standard of professionalism might vary. Police attempts to solicit bribes have been reported, as have incidents of police using excessive force." *Travel Advisory, Dominican Republic*, issued June 22, 2012. Thus, in the aggregate, the AAO found that the applicant's spouse would suffer extreme hardship if he were to relocate to the Dominican Republic. The AAO affirms its previous finding with respect to the extreme hardship that would be imposed on the applicant's spouse if he were to relocate to the Dominican Republic.

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The AAO thus finds that the evidence submitted with this application, including the motion, supports finding the applicant's spouse would experience extreme hardship if the waiver application is not approved. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters the applicant bears the burden of proving eligibility in terms of equities in the United States that are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and lawful permanent resident son would face if the applicant were to reside in the Dominican Republic, regardless of whether they accompanied the applicant or remained in the United States; the fact that the applicant has resided in the United States for more than 20 years; the applicant's apparent lack of a criminal record; and letters of reference written on her behalf. The unfavorable factors in this matter are the applicant's admission to the United States through fraud or misrepresentation and her assisting her youngest child to enter the United States in violation of the law.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The applicant was also found to be inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of the law.

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

(i) In General.- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides:

The [Secretary] may, in [her] discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The applicant is eligible for consideration for a waiver under section 212(d)(11) of the Act. A grant of the waiver is a discretionary decision based upon humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant should also be granted a waiver under Section 212(d)(11) of the Act as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, the motion to reopen will be granted and the application approved.

**ORDER:** The proceedings are reopened; the underlying application is approved.