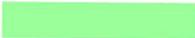


(b)(6)

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



DATE: APR 30 2013 OFFICE: NEW YORK, NY

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 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting 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 has resided in the United States since December 26, 2008, when he was admitted pursuant to a B-1/B-2 nonimmigrant visa. He 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 procured that visa 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 her daughter.

The District Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated April 28, 2012.

On appeal, counsel contends that the applicant's spouse cannot relocate to the Dominican Republic due to educational, medical, family-related, and economic reasons, as well as adverse country conditions. Counsel moreover asserts that the spouse would experience emotional and financial difficulties without the applicant present.

The record includes, but is not limited to, statements from the applicant and his spouse, letters from employers and friends, financial and educational records, articles on the Dominican Republic, other applications and petitions, evidence of birth, marriage, residence, and citizenship, and photographs. 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:

(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 reflects that the applicant falsely claimed in his 2008 B-1/B-2 nonimmigrant visa application that he was married to a Dominican named [REDACTED] when in fact he had never been married. The applicant thus misrepresented his ties to the Dominican Republic. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. Citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 claims she would suffer emotional and financial hardship if the applicant returned to the Dominican Republic without him. She explains that although the applicant is unemployed, he takes care of her daughter from a previous relationship, which saves her a significant amount of money in child care expenses. Counsel indicates that, since the spouse submitted her statement, the applicant has since found a part-time job as an assistant chef. A restaurant owner states in a letter that the applicant earns \$300 gross per week. The spouse adds that her daughter is very attached to the applicant, and would miss him if he left. She asserts that her daughter’s emotional hardship would add to the psychological difficulties she has suffered due to the applicant’s immigration situation. A psychological evaluation is submitted in support. Therein, a licensed mental health counselor opines that the spouse has an adjustment disorder with mixed anxiety and depressed mood, and that keeping the applicant in the United States would help preserve her material and emotional well-being.

Counsel contends that the country conditions in the Dominican Republic would create extreme hardship for the applicant’s spouse if she were to relocate there. Counsel asserts that the crime, economic conditions, human and drug trafficking, and inadequate medical facilities would have a negative impact on the applicant’s spouse. Articles on country conditions in the Dominican Republic are present in the record. The spouse moreover claims that her daughter’s father would not allow the daughter to relocate to the Dominican Republic, and that separation from her daughter would be unbearable. The spouse posits that, even if the daughter were allowed to move to the Dominican Republic with the applicant and his spouse, the educational facilities in that country would be inadequate for her daughter’s needs, because she has a learning disability. An

individualized education program is submitted in support. The spouse moreover states that she would lose her job as a service coordinator for an early intervention program for children with developmental delays if she relocated. The spouse states she earns \$46,500 a year, and has health as well as retirement benefits. She indicates that she and the applicant will be unable to find adequate jobs to meet their financial obligations in the Dominican Republic, and that they would not be able to pay for the applicant's blood pressure medication in that country.

Additionally, despite submission of evidence on income and the rent, electricity, and cable bills, the record does not contain sufficient evidence of the spouse's household expenses to support assertions of financial hardship. Although the record indicates that some of the spouse's bills are overdue, the applicant has not submitted sufficient documentation, such as a budget worksheet with documented expenses, demonstrating that his spouse's expenses exceed her income. Furthermore, the record contains no evidence that the spouse would be unable to pay for child care or make alternate arrangements if the applicant were not present. Furthermore, the applicant does not explain what child care arrangements have been made since the applicant began working part-time. Additionally, although the applicant has demonstrated that he contributes \$300 in gross income per week to the household, the record does not establish that the spouse would be unable to find employment in the Dominican Republic and assist his spouse from there.<sup>1</sup> Without sufficient details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant has shown that his spouse experiences some emotional difficulties when contemplating separation from him, and that her daughter has a familial relationship with the applicant. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to the Dominican Republic without his spouse.

The applicant has shown, however, that his spouse would experience extreme hardship upon relocation to the Dominican Republic. Although the record reflects that the spouse is a native of the Dominican Republic, it also indicates that the spouse relocated to the United States when she was a child and has lived here ever since. As such, adjustment to life in the Dominican Republic may be difficult for the spouse. Moreover, relocating to the Dominican Republic would entail giving up employment she has held since 2008 as a service coordinator for a program for children with developmental delays, which includes a salary of approximately \$46,500 per year and other

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<sup>1</sup> Although the applicant's spouse states that the applicant has only an eighth grade education, the applicant claims on his nonimmigrant visa application that he has attended university. Given this inconsistent information, the AAO cannot give significant weight to the spouse's assertions on the applicant's ability to find employment in the Dominican Republic given his education.

benefits. The applicant has also shown that his spouse may suffer hardship due to some adverse country conditions in the Dominican Republic.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to the Dominican Republic.

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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. 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.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.