



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: Office: NEW YORK, NY

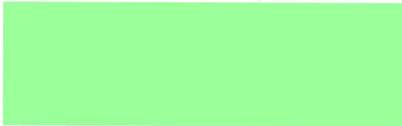


FEB 14 2013

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, New York, New York. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be granted and the underlying application remains denied.

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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), and on September 13, 2007, the Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the Director*, dated September 13, 2007. On October 15, 2007, the applicant appealed the Director's decision to the AAO. On November 9, 2011, the AAO dismissed the applicant's appeal. On December 12, 2011, the applicant, through counsel, filed a motion to reopen the AAO's decision.

In its November 9, 2011 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. On motion, the applicant, through counsel, claims that the applicant's wife is suffering extreme hardship without the applicant's support. She also claims that the applicant's stepson and in-laws depend on him. The applicant helps his wife and in-laws by taking them to their medical appointments, and if the applicant's wife has to take on that responsibility, she will suffer financial hardship because she will be unable to work as many hours. Moreover, if the applicant's wife joins the applicant in the Dominican Republic, she would not receive suitable medical care for her medical conditions.

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).

The record in support of the applicant's motion includes, but is not limited to, counsel's brief, statements from the applicant, letters of support, medical documents for the applicant's wife and father-in-law, employment documents for the applicant and his wife, household bills, financial documents, articles on medical care in the Dominican Republic, and country-conditions documents on the Dominican Republic. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

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

- (i) 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.

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

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 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 resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 stepson can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 of Immigration Appeals (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 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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 the present case, the record indicates that in 1990, the applicant attempted to enter the United States by presenting a fraudulent passport and visa. Based on the applicant’s misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

Counsel states all of the applicant’s wife’s family ties are in the United States. She also indicates that the applicant’s wife, along with the applicant, help take care of her parents. Medical documentation in the record shows that the applicant’s father-in-law has a diagnosis of non-Hodgkin’s lymphoma; however, his condition is stable. Additionally, the applicant’s wife suffers from medical conditions which are being treated in the United States. Medical documentation in the record establishes that the applicant’s wife suffers from osteoarthritis, fibromyalgia, and depression. In his statement dated December 7, 2011, [REDACTED] claims that the applicant’s wife would be not receive proper medical treatment in the Dominican Republic.

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, the applicant's wife is a native of the Dominican Republic, and it has not been established that she does not speak Spanish, that she is unfamiliar with the culture and customs of the Dominican Republic, or that she no family ties there. Additionally, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment in the Dominican Republic that would allow her to use the skills she has acquired in the United States. Going on record without supporting documentation is not sufficient to 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)). Regarding the applicant's wife's medical conditions, the submitted documentary evidence does not establish that she cannot receive medical treatment for her medical conditions in the Dominican Republic or that she must remain in the United States to receive treatment. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to the Dominican Republic.

Concerning the applicant's wife hardship if she were to remain in the United States, in his letter dated October 8, 2007, the applicant's stepson states their family will "fall apart" without the applicant. He states his mother relies on the applicant "a lot." Counsel states the applicant is a caregiver to his in-laws. She claims that "[t]he financial impact of the [a]pplicant's departure from the U.S. is not clear," because he currently helps his in-laws by taking them to their medical appointments, and if he is not available to do so, the applicant's wife will have to work fewer hours to take her parents to their appointments, possibly jeopardizing her employment. In his letter dated November 29, 2011, [REDACTED] states he has been treating the applicant's father-in-law for approximately 6 years for non-Hodgkin's lymphoma; he is "currently stable without evidence of disease," but he will need follow-up care. The applicant's stepson states that if the applicant returns to the Dominican Republic, he "will have to leave school to work full-time and become the head of this family."

Additionally, as noted above, medical documentation in the record establishes that the applicant's wife suffers from osteoarthritis, fibromyalgia, and depression. [REDACTED] states he has been treating the applicant's wife since April 2005; she was prescribed medications by her psychiatrist, who she sees on a regular basis; and she was recommended to have knee surgery.

The AAO acknowledges that the applicant's wife may suffer some emotional difficulties if she remains in the United States and the applicant returns to the Dominican Republic. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though statements in the record refer to financial difficulties, the record does not contain evidence establishing that the applicant's wife will be unable to support herself in the applicant's absence. Regarding the potential financial hardship to the applicant's wife if she takes time off work to take her parents to their medical appointments, the AAO notes that it has not been established that the applicant's stepson, who is an adult, cannot help his grandparents. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain documentary evidence establishing that the applicant would be unable to obtain employment in the

Dominican Republic and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

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. Having found the applicant statutorily ineligible for relief, the AAO finds 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 AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

**ORDER:** The motion is granted and the previous decisions of the Director and the AAO are affirmed. The application is denied.