



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

Date: **FEB 14 2013**

Office: PHILADELPHIA, PA

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

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 Field Office Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that USCIS erred in finding the applicant intentionally misrepresented herself. Counsel also contends that the applicant established extreme hardship, particularly considering the applicant's husband's medical problems, including a cyst on his right kidney, multiple pelvic bone fractures, hydroureteron ephrosis surgery, musculoskeletal disease, and kidney and other ailments.

The record contains, *inter alia*: a letter from the applicant; a letter from the applicant's husband, [REDACTED] copies of [REDACTED] medical records; a letter from a urologist; copies of the couple's son's medical records; articles addressing country conditions in the Dominican Republic; copies of tax returns, bills, and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows that on September 14, 2006, the applicant completed a non-immigrant visa application. On the application, for question 17, she indicated her marital status as “Single (Never Married).” On question 18, which asked for “Spouse’s Full Name (Even if divorced or separated....),” the applicant wrote “na.” On question 19, which asked for “Spouse’s DOB” the applicant left the box blank. On question 37, the applicant indicated that she had no relatives who were U.S. citizens or lawful permanent residents or who were residing in the United States. The applicant concedes that at the time she completed her visa application, she was, indeed, married to a lawful permanent resident. The applicant explains that she told the person at the notary agency that she “was married but . . . separated from [her] husband for approximately 3 months” and that the person at the notary agency told her she “didn’t have to say that [she was] married because [she] wasn’t with [her] husband.” The applicant contends that during her appointment with the immigration officer, she indicated she was not married because she “was going according to what the lady at the agency had told [her] . . . because she knew more about immigration than I did.”

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The applicant has not provided any competent, independent, or objective evidence to substantiate her claim. She does not describe whether anyone accompanied her when she met with the person at the notary agency and she does not contend she has made any attempt to contact the notary agency about this serious error on her application. In addition, the AAO notes that the applicant had the option on question 17 on the visa application to check that her marital status was “separated,” and that question 18 specifically requests the spouse’s full name “[e]ven if divorced or separated.” Therefore, her contention that she merely followed another person’s advice is unpersuasive. Considering these factors, the AAO finds that the applicant has not shown through independent, competent, and objective evidence that she is admissible to the United States.

To the extent counsel’s contention that the visa was valid and correctly issued despite the misrepresentation could be interpreted as a challenge to the materiality of the misrepresentation, the misrepresentation was material because it shut off a line of inquiry relevant to the applicant’s eligibility for a non-immigrant visa. Specifically, the applicant’s visa application would likely have been denied had the consular officer known the applicant was married to a lawful permanent resident living in the United States. Therefore, the AAO finds that the applicant is inadmissible under section

212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED] states that he and his wife have a four-year old son together and that it would be difficult without her. He states that they opened up a store and that he would be unable to run their store and take care of their son without his wife. He states he has been in the United States since 1995 and that he has three kids. In addition, [REDACTED] states he was in a car accident in 1995 and was hospitalized for about a month. He states he had a fracture and still suffers from constant pain on his left hip and leg, especially in the winter time. He contends his wife assists him at their store when he cannot stand on his leg because of pain. [REDACTED] also states he has kidney problems. He states that he did not have any health insurance to see a doctor, so he went to the Dominican Republic in January 2007 to see a doctor who told him he had an infection in his kidneys and kidney stones. Moreover, according [REDACTED] he has depression. He states his father passed away and his mother remains in the Dominican Republic, depending on him to send her money. He states he has no one here in the United States besides his children and that his wife helps him deal with everything.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, [REDACTED] will suffer extreme hardship if his wife's waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding [REDACTED] depression, there is no evidence in the record indicating the severity of the depression or how it is affecting his ability to function. With respect to [REDACTED] medical problems, the record contains copies of his medical records from April 1995, corroborating his contention that he was injured in a motor vehicle accident. However, there is no updated information addressing [REDACTED] contention that he continues to suffer from pain from this accident of almost twenty years ago. Similarly, although the record contains a letter from a Urologist indicating [REDACTED] had a procedure called "hydronephrosis Right Ureteral lithotripsy," the letter indicates that the problem has been resolved. Therefore, there is no evidence in the record indicating that [REDACTED] currently has any medical problems for which he needs his wife's assistance. Regarding [REDACTED] contention that he cannot run his store without his wife, there is no evidence in the record to support this contention. There are no specifics addressing how the applicant helps her husband run their store or how many employees the store employs, if any. The AAO notes that for at least the tax returns for 2008 and 2010, [REDACTED] filed his taxes with his filing status marked as "single." Regarding counsel's contention that the couple's son has special needs and is in a special program for a learning disability, there is no evidence in the record to support this contention. Although the record contains copies of the couple's son's medical records, the most recent document, dated February 9, 2011, states that the child is a "3 yo

w/speech delay now doing well.” Although the record shows the couple’s son was in speech therapy, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of the child’s purported learning disability. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant’s husband will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he returned to the Dominican Republic to be with his wife. The record shows that [REDACTED] was born in the Dominican Republic and his mother continues to live there. In addition [REDACTED] sought out medical care in the Dominican Republic and there is no suggestion in the record showing that he continues to require any specialized monitoring or treatment that cannot be adequately provided in the Dominican Republic. To the extent counsel contends that there is extremely high unemployment in the Dominican Republic, a spiraling crime rate, and political and economic turmoil, this concern alone is insufficient to show extreme hardship. In addition, [REDACTED] who, according to his Biographic Information form (Form G-325), worked as a manager of a food market prior to opening his own store, does not address whether his job skills or experience would help him find employment in the Dominican Republic. In sum, there is insufficient evidence in the record to show that [REDACTED] readjustment to living in the Dominican Republic would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that [REDACTED] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s husband caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.