



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

(b)(6)

[Redacted]

DATE: **JAN 09 2013** OFFICE: NEW YORK, NEW YORK

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[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.

Thank you,

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 sustained.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States through willful misrepresentation.¹ The applicant is the spouse of a U.S. citizen and the son of a lawful permanent resident, and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and their sons and daughters in the United States.

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 19, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application as USCIS failed to consider the hardship that not only his U.S. citizen spouse would suffer because of his inadmissibility, but also the hardship that his additional qualifying relative would experience; his lawful permanent resident mother. *See Brief in Support of Notice of Appeal or Motion* (Form I-290B), dated October 19, 2011.

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, marital, psychological, medical, employment, financial, academic, and military documents; photographs; and documents on conditions in the Dominican Republic.² The entire record, with the

¹ The record indicates that the applicant also is currently in removal proceedings before the Immigration Judge for violating the inadmissibility provisions contained in section 212(a)(7)(A)(i) of the Act, 8 U.S.C. § 1182(a)(7)(A)(i). Although the applicability of this inadmissibility ground may have bearing on the applicant's eligibility for future immigration benefits, the AAO will not reach a discussion on the merits of this issue as the matter is pending before the Immigration Judge.

² The AAO notes that the record contains some documents in the Spanish language and a partial translation of a document. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As certified and complete translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated

exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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

(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).

The District Director found the applicant inadmissible, in part, for having entered into a fraudulent divorce with his previous spouse, [REDACTED] so that [REDACTED] could qualify for an immigration benefit as the unmarried daughter of her mother. The record indicates that the applicant did not receive any advantage or a benefit provided under the Act upon divorcing [REDACTED]. Accordingly, the AAO finds that the applicant's divorce did not render him inadmissible under section 212(a)(6)(C)(i) of the Act.

However, the District Director also found the applicant inadmissible for having procured around March 23, 1990, an immigrant visa as the spouse of a U.S. citizen, [REDACTED]. The applicant subsequently entered the United States upon presenting the immigrant visa. At the time of obtaining the visa, the record demonstrates that the applicant was divorced from [REDACTED] and that he was aware of his divorce. The AAO concurs that the applicant's misrepresentation of his marital status to [REDACTED] upon the issuance of his immigrant visa was material. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 [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.

documents and must give diminished weight to the partially translated document in support of the appeal.

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. Hardship to the applicant and his sons and daughters can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and mother are the only demonstrated qualifying relatives in this case. 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 BIA 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 BIA 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 BIA 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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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.

Counsel contends that the applicant's mother would suffer extreme emotional, physical, medical, and financial hardship in the applicant's absence as: she is 88-years old and is suffering from extensive and severe medical conditions such as hypertension, hyperlipidemia, vascular disease, and diabetes, which has resulted in the removal of her left eye and the loss of vision in her other eye; the applicant serves as her caregiver while his sister is at work because both of her legs have been amputated and she is wheelchair bound; and he visits her every day and makes her his priority by taking her to her doctors' appointments, providing her financial support and buying her medications. Counsel also contends that the applicant's mother likely will deteriorate without his presence.

Counsel further contends that the applicant's spouse would suffer extreme emotional and financial hardship in the applicant's absence as: they have been together for over 19 years and created a loving, dedicated, committed life with one another; he has raised her son as if he were his own; he assists their daughter with her schoolwork and by driving her to school; she would have to maintain emotional strength as the single parent to their son and daughter as well as to his biological son, whose mother is being treated for a tumor in her neck; she relies on him for one-half of their bills and would be unable to cover their clothing and food expenses; and she fears that their daughter would be unable to pursue her college education without his supplemental income.

Additionally, the applicant's mother indicates that: she would be unable to recover from the grief and anguish resulting from being separated from the applicant; she has six children, two of whom live with their families in Queens and make an effort to visit her on the weekends; she lives with her daughter, who works during the day, so she is with a nurse during those hours; the applicant brings her flowers or fruits every day to make her feel better, talks with her to ensure that she is taking care of herself, and ensures that she has money to support herself; the applicant assists his wife by taking care of their home while she is at work during the day, and ensuring that the children have done their homework and cleaned their rooms; the applicant, when necessary, provides for his siblings' health, personal, and financial support; and the applicant works with several humanitarian organizations.

The applicant's spouse also indicates that: her physical, emotional, spiritual, and financial structure would be taken away and that the removal of the applicant would be the most devastating thing that could happen to their family; she and the applicant are not a perfect couple or parents, but they try

very hard to set an example by communicating with one another; their daughter has nightmares because of the potential loss of her father; and the applicant assists his other daughter, a single mother, by taking care of her children.

The record is sufficient to establish that the applicant's mother would suffer hardship in the applicant's absence. The applicant's mother is wheelchair bound and has been diagnosed with hypertension, hyperlipidemia, peripheral vascular disease, and diabetes mellitus, resulting in the loss of an eye and amputations.³ The applicant plays an essential role in the daily care of his mother, which he shares with his sister. Further, [REDACTED] states that the applicant's mother's "medical condition will probably deteriorate if [the applicant] is not present to help in activities of daily living", and [REDACTED] states, "[The applicant and his spouse's mothers] would be devastated if [the applicant and his spouse] are forced to leave the United States[,] and it would not be too much to state that in either [the applicant or his spouse's] absence[,] their mothers' lives will be at risk." *Medical Letter, supra; Forensic Psychological Evaluation, supra.*

Additionally, the record is sufficient to establish that the applicant has been continuously employed by [REDACTED] in the capacity of a Singer. And, although the record does not include sufficient evidence of the financial support that the applicant and his spouse provide to his mother, the record includes some evidence of their current financial obligations such as their cable, utility, telephone, medical, and credit card bills. In the aggregate, the AAO finds that the applicant's mother would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's mother and spouse will suffer extreme hardship upon relocating to the Dominican Republic to be with the applicant as: the applicant's mother is elderly and suffering from medical conditions; the applicant's spouse has close ties to her immediate family members living in the United States, including her elderly mother and disabled sister who depend on her care; the applicant and his spouse's daughter has learning difficulties and would have a difficult time transitioning to college without her mother's presence; the applicant's youngest son depends on his spouse's care as the son's biological mother is receiving medical treatment for a neck tumor; and his spouse does not have any connections to the Dominican Republic as her entire family is Puerto Rican, and thereby, she would not have any support in transitioning to life in the Dominican Republic. The AAO notes that in her decision regarding the applicant's prior Form I-601 waiver application, the District Director determined that the applicant's mother would suffer extreme hardship upon relocation to the Dominican Republic due to her medical conditions.⁴ The AAO also

³ The AAO notes that the record is unclear concerning the extent of the applicant's mother's amputations. The record includes statement that both legs have been amputated as well as documentation that some toes and her right foot have been amputated. *See Brief in Support of Appeal, supra; see also Medical Letter Issued by [REDACTED] MD, P.C., dated February 4, 2011; Forensic Psychological Evaluation Issued by [REDACTED] MA, MSW, LCSW, CPFT, PsyD, JD, dated October 29, 2007.*

⁴ The AAO notes that the District Director's decision erroneously references extreme hardship to the applicant's spouse upon relocation because of the spouse's medical conditions. As the record does

notes that the circumstances concerning the applicant's mother's medical conditions have not improved since filing the waiver application currently on appeal. The record reflects that the cumulative effect of the hardship that the applicant's mother would experience due to the applicant's inadmissibility rises to the level of extreme.⁵

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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) . . .

Id. at 301.

The Board further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he

not include sufficient evidence of the applicant's spouse's medical conditions other than what was self-reported during [redacted] psychological evaluation, but does contain sufficient documentation from the applicant's mother's physician, the AAO finds that the District Director found extreme hardship to the applicant's mother upon relocation because of her medical conditions.

⁵ As the applicant has established extreme hardship to his mother, the AAO finds that it is unnecessary to analyze separately whether his spouse also would suffer extreme hardship.

merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's lawful permanent resident mother, familial and community ties, the payment of taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of his marital status upon the issuance of an immigrant visa.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

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. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.