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U.S. Citizenship
and Immigration
Services

DATE: **JAN 11 2012** Office: MOUNT LAUREL, NEW JERSEY

FILE: [REDACTED]

IN RE: [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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey 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 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) for entering the United States through misrepresentation.¹ The applicant is the beneficiary of an approved Petition for Alien Relative and seeks waivers of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act in order to reside in the United States with her United States citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 15, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility.

The record contains, but is not limited to: statements from the applicant and the applicant's spouse, letters from other interested parties, as well as financial records, medical reports, various immigration applications, and copies of identification documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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, in pertinent part:

- (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

¹ The record shows that the applicant may also be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. However, her date of departure after her unlawful entry is not known, and thus the AAO is unable to determine the amount of unlawful presence she accrued. As the applicant is clearly inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires as a waiver under section 212(i) of the Act, we need not settle whether she is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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.

The record reflects the applicant entered the United States on at least two occasions, first in 1997, and again in 2001, using a passport and visa using the false identity of [REDACTED]. There is no record of the applicant's departure following the 1997 entry, although it is clear that she did depart the United States at some point after this admission. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for obtaining visas and admission to the United States through misrepresentation of a material fact. The applicant does not contest her inadmissibility and the AAO concurs in the finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent 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. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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*, 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.

In the present case the applicant’s spouse indicates he cannot live in the Dominican Republic because of his need for regular medical care due to various illnesses such as hypertension, glaucoma, diabetes, and initial stage renal failure. The applicant has submitted evidence in support of these assertions in the form of various medical reports regarding the qualifying spouse’s health conditions. See reports from *Cardiovascular Association of Delaware Valley, P.A.* The applicant’s spouse also indicates that he fears separation from the applicant because of the assistance she provides him in taking his medications and attending the medical appointments which keep his illnesses under control. The applicant’s spouse further indicates that the applicant’s presence saved his life when he began to have pains during a recent episode and she was able to call the emergency services.

The applicant has demonstrated that relocation would cause an extreme hardship to the qualifying spouse in this case. The qualifying spouse is currently suffering with a number of serious illnesses for which he is receiving regular professional care. If he were to move to the Dominican Republic with the applicant, it would at the very least cause a disruption to this care

plan. And although the qualifying spouse was born in that country and speaks the language, he has not lived inside of the Dominican Republic since 1962 which might make it difficult for him to access necessary health care within a reasonable amount of time. A significant delay in finding comparable treatment for such long-term illnesses as diabetes and hypertension in the spouse's case would likely prove extreme in nature.

However, the applicant has not demonstrated that separation from her spouse would cause hardship beyond what would be expected under the circumstances. The applicant's evidence does not support the assertions that the qualifying relative would suffer extreme hardship if he remained in the United States without the applicant. The applicant's spouse indicates that he relies on the applicant to keep his medications and health care appointments organized, yet, it was not clear from the evidence presented why the applicant's spouse was unable to maintain these health needs himself. It is noted that, while the applicant has submitted numerous raw medical records for her spouse, the record lacks a clear summary from a medical professional that reflects whether her spouse requires assistance beyond physician monitoring and medication. While it can be acknowledged that the applicant has made her spouse's life easier by assisting him in this regard, it has not been shown that the physical absence of the applicant would cause her spouse hardship beyond what would be expected under the circumstances. The applicant's spouse has lived with many of these health issues for a significant amount of time prior to their marriage and there has been insufficient evidence provided to demonstrate that the continued management of his health care without the applicant's presence in the United States would cause him to suffer extreme difficulties.

Therefore, although it may be ideal for the applicant to reside in the household in the United States, it has not been demonstrated that the separation would create extreme hardship for the applicant's spouse

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 in 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 of a spouse to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a

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qualifying family member no purpose would be served in determining whether the applicant merits a waiver under section 212(i) of the Act 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. 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.