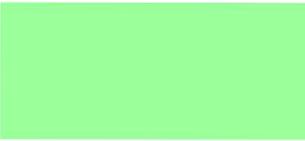




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: SEP 04 2013

Office: NEW YORK, NY

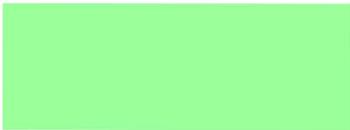
FILE: [Redacted]

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. An appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was granted by the AAO, and the AAO affirmed the denial of the underlying waiver application. The matter is again before the AAO on a motion. The motion will be granted and the prior decision of the AAO will be affirmed.

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 is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his U.S. citizen spouse.

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. *Decision of the District Director*, dated September 13, 2007.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated November 9, 2011. Consequently, the appeal was dismissed. *Id.*

On December 12, 2011, the applicant, through counsel, filed a motion to reopen the AAO's decision. The AAO granted the motion to reopen, and affirmed the denial of the underlying waiver application. *Decision of the AAO*, dated February 14, 2013. The applicant subsequently, through counsel, filed a second motion to reopen the AAO's decision of February 14, 2013.

On motion, the applicant presents additional evidence of medical hardship to the applicant's spouse, financial documentation, and letters from the applicant's spouse's son and the applicant's spouse's sisters. 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. As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

The record contains the following documentation: a statement by counsel included on the Notice of Appeal or Motion (Form I-290B); counsel's brief in support of the applicant's initial Form I-290B; medical documentation for the applicant's spouse; financial documentation; a letter from the son of the applicant's spouse; a letter from three sisters of the applicant's spouse residing in the Dominican Republic; and documentation submitted with the applicant's initial Form I-290B and Form I-601. The entire record was reviewed and considered in rendering a decision on the motion to reopen.

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.

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

Section 212 of the Act provides, in pertinent part:

- (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.¹ 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-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 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

¹ Although the record indicates that at one time the applicant's father was a lawful permanent resident residing in the United States, there is no indication in the record regarding the current status of the applicant's father, and the applicant makes no claim of hardship to his father if the waiver application is not approved.

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 (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 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.

The applicant contends that his spouse will suffer medical hardship if the applicant's waiver is not approved. On motion, the applicant submits a letter from [REDACTED] dated February 25, 2013, stating that the applicant's spouse has been his patient since April 2005, and that she has been diagnosed with Osteoarthritis, Fibromyalgia, lower back pain and Chondromalacia Patella and Osteonecrosis of both knees. In support of the applicant's initial motion to reopen, the applicant submitted a letter from the same doctor, dated December 7, 2011, stating that the applicant's spouse was diagnosed with osteoarthritis, fibromyalgia, and depression. However, the record contains no further details about the medical

conditions of the applicant's spouse, and the extent of the treatment and care that is required for these conditions. The evidence on the record is insufficient to conclude that the medical problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

As noted above, [REDACTED] states in his letter of December 7, 2011, that the applicant's spouse is suffering from depression. There is no mention in [REDACTED] letter of February 25, 2013, that the applicant's spouse continues to suffer from depression. The record contains no further detail about this condition and any treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

In regard to any financial hardship that the applicant's spouse may face if the applicant's waiver application is not approved, financial documentation in the record indicates that the applicant's spouse is employed, and earns approximately \$1,400 per month. There is no evidence in the record to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regard to relocation, the AAO previously determined that the applicant's wife is a native of the Dominican Republic, and that she is familiar with the culture and customs of the Dominican Republic. The AAO further noted that 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. *Decision of the AAO*, dated February 14, 2013.

In regard to the ability of the applicant's spouse to obtain medical treatment in the Dominican Republic, [REDACTED] states in both his letters, cited above, that the applicant would not be able to receive proper medical treatment in the Dominican Republic. However, as noted in the previous decision of the AAO, 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. *Decision of the AAO*, dated February 14, 2013.

Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to the Dominican Republic to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to

reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of extreme as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is granted and the prior decision of the AAO is affirmed.