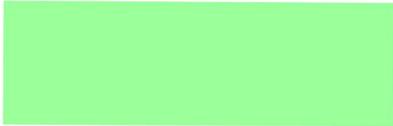




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 15 2014**

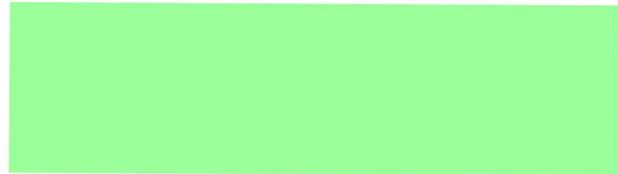
Office: PHILADELPHIA

FILE:

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 (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,

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Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, Pennsylvania, denied the waiver application and the matter 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 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated June 10, 2014.

On appeal counsel for the applicant contends that the applicant presented sufficient evidence to establish extreme hardship to his spouse and that the hardship factors should be looked at in the aggregate. With the appeal counsel submits a brief and copies of previously-submitted documentation. The record contains psychological evaluations of the applicant's spouse, letters of support for the applicant and his spouse from family and friends, a statement from the applicant's spouse submitted with a previous Form I-601, financial documentation, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 as a B-2 visitor on May 5, 2004, with a Dominican Republic passport and U.S. visa issued to another person. The field office director noted

that on his most recent Form I-485 and at his 2013 interview to adjust status the applicant admitted that he had entered the United States using fraudulent documents. The field office director determined, however, that on a previous application to adjust status and related interview the applicant had failed to admit using a fraudulent document until notified in a Notice of Intent to Deny the application that USCIS had knowledge of the fraudulent passport and visa used by the applicant to enter the United States. Based on this information the field office director found the applicant inadmissible for fraud or misrepresentation. The applicant has not contested the finding of inadmissibility on appeal.

A waiver of inadmissibility under section 212(i) of the Act is dependent 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. 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 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 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. *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.

On appeal counsel asserts that the applicant’s spouse suffers from mental health disorders and that two mental health providers have determined that she would suffer extreme hardship if separated from the applicant. Counsel notes that one report comments that because of her childhood history of abandonment by both parents, the applicant’s spouse would have a greater risk of hardship. Counsel asserts that because of the applicant his spouse has become stable in her life and that separation from the applicant would cause a setback to the stability that has led her to build relationships with those who have hurt her in the past. Counsel asserts that the applicant’s spouse has finally been given the ability to grow in educational and professional endeavors and to have thoughts of having a family, and that all her positive life changes would be destroyed if she is separated from the applicant.

A February 2012 psychological evaluation by a clinical psychologist states that the spouse’s mother came to the United States when the spouse was nine years old, so from nine to 15 years old she was raised by a caretaker in the Dominican Republic, although her mother frequently visited. The evaluation states that when the spouse learned the applicant might need to return to the Dominican Republic, she experienced a depressive reaction with difficulty sleeping, increase in appetite, loss of energy, and difficulty concentrating. The evaluation states that if the applicant is removed from the United States the spouse’s depression would be enhanced and she would need psychotherapy. A February 2013 follow up report notes that the applicant and his spouse receive counseling from a pastor at a local church for depression and anxiety related to the applicant’s immigration matter.

A March 2013 letter from a licensed psychologist indicates that the applicant’s spouse had been attending weekly individual psychotherapy sessions, but no time frame was given for when the sessions occurred. A July 2013 letter submitted to update the spouse’s mental health treatment

indicates that she was diagnosed with Anxiety Disorder and Major Depressive Disorder, but does not require medication unless symptoms worsen. The letter indicates that as a child the spouse had been abandoned by both parents and that at three years old she was kidnapped by her father, but since her marriage to the applicant has been able to reconcile with her father and trust men again. The letter states that the applicant's support is essential to the spouse's ability to feel safe and to function and that loss of the applicant would mean a setback in her ability to trust others and a return of physiological symptoms. A letter from a pastor states that the applicant and his spouse were counseled for the spouse's depression and anxiety and that she depends on the applicant for love and fears being abandoned.

In a statement submitted with the prior Form I-601 the applicant's spouse states that her life has been subjected to lost relationships as her mother left when she was nine years old to come to the United States and that her father had also left the family. She states that she tried to do well in school but was instead focused on the absences in her life. She states that she has always had depression and anxiety issues, been afraid of separation, and searched for stability, and that the applicant is the stability and strength she needs. The spouse's mother states that the spouse has always had issues concerning stability and being depressed, that she has never had a strong male influence and felt a lack of family unity without her father in her life. The mother states that applicant is a positive force and without him she will be without stability, purpose, or foundation.

While we recognize that the applicant's spouse will experience some emotional hardship due to separation from the applicant, the statements and reports provided do not establish the severity of the hardship or the effects on her daily life. We recognize that the applicant is emotionally supportive of his spouse, who will endure some hardship as a result of long-term separation from him. 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. The record also shows that the applicant has extended family in the United States for emotional support, and it has not been established that the applicant's spouse would be unable to travel to Dominican Republic to visit the applicant.

The applicant's spouse has not asserted that she would suffer financial hardship due to separation from the applicant. Financial documentation submitted to the record includes income tax information, but no documentation of the spouse's current expenses, liabilities, or overall financial situation has been submitted. Counsel asserts that the applicant's spouse could not continue operating the business they have established if her mental state regresses and that the economic circumstances from a collapse of the business would leave the household in disarray. Financial documentation submitted to the record includes a 2012 business license with the applicant's name, and an unsigned letter dated February 11, 2013, from an employer of the applicant. The record lacks details of their business operations, including the roles of the applicant and his spouse, and does not demonstrate that the applicant's presence is necessary for the operation of the business or that his absence would adversely affect the business, such as to result in a reduction in income to his spouse. Without additional evidence we are unable to assess the extent of any financial hardship the applicant's spouse would experience in the applicant's absence.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. We acknowledge that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to the Dominican Republic to reside with the applicant. Counsel notes that a psychological report of the applicant's spouse opines that relocation would be an extreme change that would have a severe impact on her vocational pursuits and ability to contribute to civic causes, and thus lead to a possible set back in her stability and mental health. Counsel asserts that the spouse would not be able to get the same level of mental health treatment in the Dominican Republic as in the United States, and although she currently takes no medication, that could change if her condition is aggravated. Counsel further asserts that the spouse has gained trust with her current therapists, so disturbing that could result in a setback to her continued progress.

The forensic psychologist notes that the applicant's spouse has no strong family ties in the Dominican Republic as her primary family is in the United States. It notes that the spouse is motivated to complete her studies and has a strong sense of community activism, so if she relocated it is questionable whether she could continue or utilize her education or contribute to community projects, which would likely exacerbate her underlying depressive disorder. The report notes that the applicant's spouse states that she would miss her family and wants her college degree, and that she also states that the crime rate is high and police corrupt in the Dominican Republic.

The record contains a World Health Organization report on mental health systems in Central America and the Dominican Republic, but the report is general in nature and does not establish that the applicant's spouse would be unable to obtain counseling, if needed, in the Dominican Republic. No other country conditions information has been submitted to support the assertion that the applicant's spouse would be unable to continue her education or other interests or would fear for her safety in the Dominican Republic, her native country.

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 U.S. citizen 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. Although we are not insensitive to the 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.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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NON-PRECEDENT DECISION

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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 appeal is dismissed.