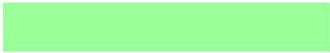


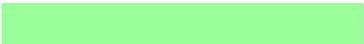


**U.S. Citizenship
and Immigration
Services**

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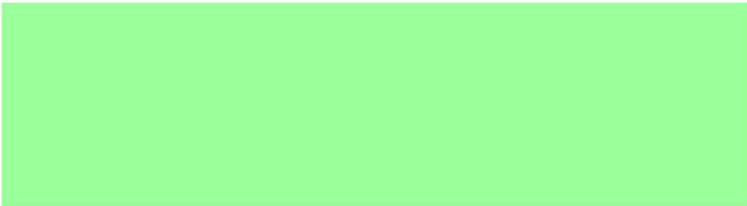


DATE: **JAN 29 2014** Office: NEW YORK 

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,




Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York. 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and mother.

The district director found 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 January 7, 2013.

On appeal, counsel submits the following: a brief, a duplicate copy of an affidavit from the applicant's spouse, a psychoemotional and family dynamics assessment, employment and financial documentation, medical records pertaining to the applicant's spouse and mother, information about country conditions in the Dominican Republic, and evidence of the presence of the applicant's siblings in the United States. The entire record was reviewed and considered in rendering this decision.

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:

- (1) 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 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 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...

With respect to the district director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant procured entry to the United States in 2002 with an altered nonimmigrant visa. The

applicant does not contest this finding of inadmissibility. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation.

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 U.S. citizen spouse and mother are the only qualifying relatives in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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. *See Salcido-Salcido v. I.N.S.*, 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.

The applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration, the applicant’s spouse explains that he loves his wife very much and needs her by his side, and long-term separation from her would cause him hardship. He maintains that she takes care of him and the home, and he does not want to be deprived of her care, love and attention. In addition, the applicant’s spouse states that he has suffered from high blood pressure in the past and the applicant ensures that he is eating the proper foods to help maintain a low blood pressure. The applicant’s spouse further details that although he is employed as a taxi driver, his wife also works and contributes to the finances of the household, and were she to relocate abroad, he would experience financial hardship. Finally, the applicant’s spouse maintains that were his wife to relocate abroad, she would not be able to support herself and having to maintain two households would cause him financial hardship. [REDACTED]. On appeal, counsel details that the applicant’s spouse was recently involved in an automobile accident which left him unable to work and the applicant’s financial support was critical in maintaining the household. *Brief in Support of Appeal*, dated February 25, 2013.

To begin, with respect to the emotional hardship referenced, although an assessment has been provided by [REDACTED] stating that the applicant’s spouse is depressed and anxious as a result of the uncertainties over his wife’s immigration situation, the record does not establish that the applicant’s spouse’s emotional hardships would be beyond the normal hardships expected when a spouse relocates abroad due to inadmissibility. The AAO acknowledges the applicant’s spouse’s contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, but the record does not establish the severity of this hardship or the effects on his daily life. As for the applicant’s spouse’s medical conditions, although the

record establishes that the applicant's spouse is being treated with medications for hypertension, dyslipidemia and diabetes mellitus, the letter from the applicant's spouse's treating physician fails to establish that without the applicant's daily presence, the applicant's spouse will experience medical hardship. While counsel has submitted evidence establishing that the applicant's spouse was in an accident and was treated for a sprained foot and back pain in November 2012, no current documentation has been provided from the applicant's spouse's treating physician detailing his current condition and any limitations on the applicant's spouse's ability to work and care for himself on his own. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Alternatively, the applicant has not established that she would be unable to support herself in her native country. The record establishes that the applicant has three adult children residing in the Dominican Republic. Finally, the AAO notes that the applicant's spouse has a support network in the United States, including his parents and five siblings. The applicant has not established that her spouse's relatives would be unable to provide the applicant's spouse with emotional or financial assistance.

As for the applicant's U.S. citizen mother, counsel contends that she is 80 years old and suffers from numerous medical issues which require medication and ongoing medical care and without the applicant's presence, she will experience hardship. Counsel maintains that due to the mother's age, the closeness of the family is comforting, and were the applicant to relocate abroad, the applicant's mother would experience hardship. *Supra* at 6. While counsel has provided a list of medications and medical records for the applicant's mother, no declaration has been submitted by the applicant's mother detailing what hardships, if any, she will experience were her daughter to relocate abroad. Nor has a letter been provided from the applicant's mother's treating physician outlining her current medical conditions, the treatment plan and what hardships she will experience were the applicant specifically to relocate abroad. The AAO notes that the applicant's mother resides with one of the applicant's siblings in New Jersey and has other children that live in the United States. The applicant has not established that her siblings would be unable to assist their mother should the need arise. Nor has the applicant established that her mother would not be able to travel to the Dominican Republic, her native country, to visit the applicant. The applicant has thus failed to establish that her spouse or mother would experience extreme hardship were they to remain in the United States while the applicant relocates abroad as a result of her inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse details that he has been residing in the United States for over 20 years and no longer has any ties to the Dominican Republic. He further explains that his entire family, including his parents and five siblings, reside in the United States, and he has no remaining family abroad. Moreover, the applicant's spouse states that he has a stable job, and were he to relocate abroad, he would not be able to obtain gainful employment and would be unable to receive affordable and effective medical treatment. Finally, the applicant's spouse references the problematic country conditions in the Dominican Republic, including the high rates of poverty and unemployment. *Supra* at 2-3. The record reflects that the applicant's U.S. citizen spouse has been residing in the

United States for over twenty years. Were he to relocate abroad to reside with his wife as a result of her inadmissibility, he would have to leave his home, his elderly parents, his siblings and their families, his community and his gainful employment as an independent contract driver for [REDACTED] and he would be concerned about his safety and well-being in the Dominican Republic as result of crime and poverty.

As for hardship to the applicant's mother were she to relocate abroad, counsel maintains that the applicant's mother would not have access to the constant medical attention and prescriptions she requires in the Dominican Republic. Counsel further references the problematic country conditions in the Dominican Republic. The record establishes that the applicant's mother is in her 80s. She has been a U.S. citizen since 2008. All her children reside in the United States. Further, documentation provided establishing that the applicant's mother is being treated for numerous medical issues that require ongoing treatment. The applicant has thus established that her spouse and mother would suffer extreme hardship were they to relocate abroad to reside with the applicant due to her inadmissibility.

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 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.

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 or mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's and mother's situation, the record does not establish that the hardships they 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 appeal is dismissed.