



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **NOV 05 2014**

Office: NEW YORK (LONG ISLAND) 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 (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. 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 attempting to procure an immigration benefit in the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen wife and son.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, July 1, 2014.¹

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) erroneously denied the applicant's waiver application based on an unsupported and overly stringent reading of the law, in addition to a capricious weighing of the evidence in support of the waiver. Counsel submits additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to, the following documentation: briefs filed by counsel in support of Form I-601 and Form I-290B, statements from the applicant and the applicant's spouse, a psychological assessment by a certified clinical psychopathologist for the applicant's spouse, a hardship letter by a licensed clinical social worker for the applicant's spouse, financial documentation, medical and school documents for the applicant's son, and country-conditions information on the Dominican Republic. 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.

The record indicates that the applicant entered the United States without inspection in August 2001. The applicant applied for adjustment of status based upon a Form I-130, Petition for Alien Relative (Form I-130) filed by the applicant's spouse. On his Form I-485, Application to Adjust Status, and during the applicant's adjustment of status interview on May 22, 2012, he presented a fraudulent

¹ The decision of the District Director indicates that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act and that he filed the Form I-601 pursuant to section 212(h) of the Act. As the applicant was found to have sought to procure an immigration benefit through fraud or misrepresentation, the applicable ground of inadmissibility is section 212(a)(6)(C)(i) of the Act, and the applicant seeks a waiver under section 212(i) of the Act.

visa and a fraudulent Form I-94 Arrival / Departure Record which indicated that the applicant was inspected and admitted to the United States on May 22, 2001. The applicant admitted that the visa and Form I-94 were false. The applicant does not contest his inadmissibility.²

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 wife is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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.

² Section 245 of the Act provides that a person who was not inspected and admitted or paroled is not able to adjust their status in the United States unless he/she qualifies for relief under section 245(i) of the Act. Although the applicant entered the United States without inspection in 2001, the record indicates that the applicant was approved for advance parole on August 22, 2013, departed the United States, and on September 30, 2013, the applicant was paroled into the United States at [REDACTED]

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. 1993), (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 USCIS did not appropriately weigh the positive discretionary factors in the case and held the applicant to a more onerous standard than required by law. Counsel notes that one of the central purposes of a waiver of inadmissibility is to "provide for the unification of families," and that a failure to weigh all "family factors is reversible," citing *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1978) and *Delmundo v. INS*, 43 F.3d 436 (9th Cir. 1994). Counsel further cites

the case of *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) as holding that separation of family may be “the most important single hardship factor” in granting relief. Although this case does not fall under the jurisdiction of the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors in the present case.

Counsel asserts that the statement submitted by the applicant’s spouse details the extraordinary physical, financial, emotional, and mental hardship she would face if separated from the applicant.

With respect to physical hardship, there is no evidence in the record to indicate that the applicant’s spouse has any medical conditions or physical incapacities that require the support of the applicant.

In regard to financial hardship, the record indicates that the applicant’s spouse was gainfully employed at a chocolate factory in ██████████ New York from August 2005 until October 2012, when the factory was damaged by ██████████. A letter from the factory dated May 2012 indicates that the applicant’s spouse was earning \$348.40 per week, or approximately 19,000 per year. The record further includes evidence that the applicant’s spouse is currently unemployed, and received \$9,614 in unemployment compensation during 2013. The applicant’s spouse states that she has not returned to the job at the chocolate factory because it was shut down following the hurricane, and, although she has been searching, she has not been able to find work.

The applicant’s spouse states that the applicant is the sole source of support for her and their child. Counsel states that throughout the applicant’s time in the United States since 2001, he has been gainfully employed and paid his taxes accordingly. Copies of federal income tax returns in the record for the years 2010 to 2012 for the applicant’s spouse indicate that she filed as a head of household, with her son as a dependent, and no reported income for the applicant. The applicant’s federal income tax return for 2013, filed jointly with his spouse, indicates that his wages for 2013 totaled \$2,900, and the majority of the couple’s income that year was derived from unemployment compensation for the applicant’s spouse. Pay stubs for the applicant for 2014 indicate that as of July 9, 2014, the applicant’s gross pay year-to-date was \$8,960.

We recognize that the applicant’s spouse will experience some financial difficulty if the waiver application is not approved. However, it is unclear from the evidence in the record whether the qualifying spouse would be unable to meet her financial obligations in the applicant’s absence.

Counsel contends that the applicant’s spouse will suffer emotional and mental hardship if the applicant’s waiver application is not approved. The record includes a psychoemotional and family dynamics assessment by a certified clinical psychopathologist based on an evaluation of the applicant’s spouse conducted between July 5, 2014 and July 12, 2014. The assessment provides a diagnostic impression that the applicant’s spouse is experiencing a comorbid anxious-depressive condition triggered by the uncertainties of her husband’s pending immigration situation and has developed an adjustment disorder with mixed anxiety and depressed mood. The record further includes an undated extreme hardship letter by a licensed clinical social worker. The letter indicates that the writer is the therapist for the applicant’s spouse, but it provides no detail about the extent of the relationship between the writer and the applicant’s spouse and no indication that the information

in the letter is the product of an ongoing therapeutic relationship. The letter indicates that the applicant is a hard-working and responsible parent and discusses his relationship with his son and the financial issues for the applicant's spouse if the waiver application is not approved. With respect to social and emotional factors, the letter states that separation from the applicant would create a lack of moral support for his spouse and a vacuum in her social life, and her peace of mind would vanish.

Although we are sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the mental and emotional hardships to the applicant's spouse, and the symptoms she has experienced, are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

The applicant's spouse states that her son had to repeat the first grade and is being evaluated for learning disabilities. As stated above, under section 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered insofar as it affects whether a qualifying relative experiences extreme hardship.

Counsel contends that the medical records for the applicant's son indicate that he is being evaluated for learning disabilities. The record includes 22 pages of medical records for the applicant's son from 2006 to 2013. While the medical records detail a number of physical and medical conditions that the applicant's son has experienced, it is unclear from the records that he is being evaluation for a learning disability. The undated letter from the licensed clinical social worker also indicates that an evaluation with the Department of Education needs to take place to determine if the applicant's son has learning disabilities, but there is no indication that that evaluation has taken place, nor is there any evidence in the record from a psychological or medical professional to establish that the son has learning disabilities.

The applicant's spouse states that her son had to repeat the first grade. The record includes a letter dated May 8, 2014 from the son's school and a copy of his report card; however, there is nothing in this record to indicate that he was required to repeat the first grade or that he has a learning disability. Counsel contends that the applicant's son receives special tutoring from the [REDACTED] as an indication that he has learning disabilities and requires remedial instruction and submits documentation to verify that the son is enrolled in the education center. The documentation indicates that the [REDACTED] is a provider of child care and early childhood education services, including day care, pre-school, after-school care, and summer camps for children. There is no evidence in the record that the applicant and his spouse send their son to this center for anything further than after-school day care.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the evidence in the record fails to establish that the hardships the applicant's spouse will experience, even when considered in the aggregate, rise to the level of extreme. 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.

With respect to relocation, we note that the applicant's spouse was born in the Dominican Republic, and thus is familiar with the language and customs of that country. Counsel asserts that the applicant's spouse's entire family resides in the United States; however, the record indicates that the applicant's mother still resides in the Dominican Republic.

The country-conditions information submitted to the record consists of the State Department's 2013 Country Reports on Human Rights Practices for the Dominican Republic. The applicant states that if he returns to the Dominican Republic, he will not be able to find work. Counsel asserts that the applicant would never be able to find equivalent work outside the United States to support his family. Counsel notes that the assessment provided by the certified clinical psychopathologist contends that the applicant's spouse would face "inescapable unemployment, underemployment, infrastructural and socio-economic problems...[because the Dominican Republic] remains chronically affected by widespread poverty, joblessness, corruption, cronyism, and nepotism." However, there is no evidence in the record to support these contentions. 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)). The Country Reports on Human Rights Practices for the Dominican Republic does not provide any information specific to the inability of the applicant and his spouse to find employment in the Dominican Republic. Moreover, 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).

Counsel contends that if the applicant's spouse returns to the Dominican Republic with her husband, she will be unable to receive the medical, emergency, professional, education, religious, and psychological services she obtains in the United States. The U.S. Department of State "Alerts and Warnings" for the Dominican Republic states although "adequate medical facilities can be found in large cities, particularly in private hospitals, the quality of care can vary greatly outside major population centers." See <http://travel.state.gov/content/passports/english/country/dominican-republic.html>. Information in the record indicates that the applicant's parents and the mother of the applicant's spouse reside in Santiago, Dominican Republic, a large city. The State Department "Alerts and Warnings" supports counsel's contention that the applicant's spouse would have difficulty receiving emergency care. "There is an emergency 911 service within Santo Domingo, but its reliability is questionable. Outside the capital, emergency services range from extremely limited to nonexistent." *Id.* There is no evidence in the record to establish that the applicant's spouse would be unable to receive professional, education, and religious services she obtains in the United States in the Dominican Republic. With respect to psychological services the applicant's spouse obtains in the United States, as noted above, there is no evidence in the record to show that she has established long-term relationships with either the certified clinical psychopathologist or the licensed clinical social worker who provided documentation regarding her psychological and emotional hardships.

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.

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 to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. 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.

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.