



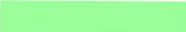
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 06 2014**

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(d)(11)

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 Director, Nebraska Service Center. 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 admission to the United States through fraud or misrepresentation. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly assisted another alien to try to enter the United States in violation of the Act. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), to reside in the United States with her lawful permanent resident mother.

The 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 Director*, March 3, 2014.

On appeal, counsel states that the decision of the Director dismissed the evidence of hardship as normal problems associated with a separation, but contends that when the evidence is viewed cumulatively rather than in isolation, it shows that the applicant's lawful permanent resident mother would experience extreme hardship if the waiver application is not approved. Counsel also submits evidence of employment and property ownership of the applicant in the Dominican Republic.

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, Notice of Appeal or Motion; statements from the applicant, the applicant's mother, and the applicant's three children; medical documentation for the applicant's mother; school and medical documentation for two of the applicant's grandchildren; employment documents for the applicant; property title for the applicant; 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 applied for an immigrant visa at the U.S. Consulate in Santo Domingo, Dominican Republic, in 2009, based upon a Form I-130, Petition for Alien Relative (Form I-130) filed by the applicant's lawful permanent resident mother on May 17, 1996 under section 203(a)(2)(B) of the Act, as an unmarried son or daughter of a lawful permanent resident. The Consular Officer determined that while the applicant was married from 1994 until her divorce on November [REDACTED] the applicant was listed as single on the Form I-130 and on a signed and sworn

Form DS-230, Application for Immigrant Visa and Alien Registration. The Consular Officer determined that the applicant misrepresented a material fact in concealing her marital status in order to obtain an immigration benefit as the unmarried daughter of a lawful permanent resident, and found applicant inadmissible under section 212(a)(6)(C) of the Act. The applicant does not contest this inadmissibility.

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

- (i) In General- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

....

- (iii) Waiver authorized- For provision authorizing waiver of clause (i), see subsection (d)(11).

The Consular Officer further determined that, in addition to concealing her marital status, the applicant listed three derivative beneficiaries on her application, rendering her inadmissible under section 212(a)(6)(E)(i) of the Act for having knowingly assisted another alien to try to enter the United States in violation of the Act. The applicant also does not contest this inadmissibility.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident mother 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. *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 states that the applicant's mother suffers from depression, hypertension, and hyperlipidemia. Medical documentation in the file includes a February 25, 2013 letter from her doctor stating that her current medical conditions are hypertension and hyperlipidemia. A copy of the medical progress notes indicates that the current medications for the applicant's mother include Atenolol, Amlodipine, and aloe vera.

The applicant's mother states that she suffers from depression, hypertension, and hyperlipidemia and was hospitalized in 2009 for depression and given antidepressants. The medical progress notes of February 25, 2013 indicate that the applicant's mother was hospitalized in 2009. However, there is no indication in the record that the applicant's mother continues to suffer from depression; depression is not listed as a current medical condition in the doctor's statement of February 23, 2013, nor is there any indication that the applicant's mother is currently under any medication for depression.

Counsel asserts that the applicant's mother cannot live alone due to her advanced age and medical condition, and needs assistance from others in order to survive. Counsel states that the applicant's mother splits her time between the United States and the Dominican Republic, she does not have a home in the United States, and she is forced to reside with distant relatives who are unable to help her treat her medical conditions, take her to doctor's appointments, and provide her with her medications. Counsel further states that the applicant's mother is unemployed, indicating she will suffer financial hardship if the applicant's waiver application is not approved. The record indicates that the applicant's mother has been a lawful permanent resident since 1994. While counsel states that she does not have a home in the United States, there is no evidence in the record regarding any of the assets and liabilities that the applicant's mother accrued over the past 20 years, and we are unable to make a determination regarding any financial hardship that she may experience. Furthermore, while counsel states that the applicant's mother is forced to live with distant relatives while in the United States, counsel does not explain who these distant relatives are. The record indicates that the applicant has three children in the United States, her U.S. citizen daughter and two lawful permanent resident sons. The applicant's U.S. citizen daughter states that she is a single mother with two children and was unable to support herself in the United States, so she returned to live in the Dominican Republic. However, there is no evidence in the record to establish that the applicant's two lawful permanent resident sons cannot provide support to the applicant's mother when residing in the United States.

We recognize that the applicant's mother 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 mother 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 a

relative not qualifying to enter the United States and does not rise to the level of extreme hardship based on the record.

With respect to relocation, we note that the applicant's mother was born in the Dominican Republic and thus is familiar with the language and customs of that country. Furthermore, counsel states that the applicant's mother splits her time between the United States and the Dominican Republic, providing an indication that the applicant's mother is able to reside in the Dominican Republic.

Counsel asserts that the applicant's mother does not have access to her doctors who are in the United States and cannot afford to obtain her medications there. However, there is no evidence in the record that the applicant's mother is unable to find adequate physician care in the Dominican Republic and no evidence in the record to support counsel's assertion that she cannot afford to obtain her medications for hypertension and hyperlipidemia in the Dominican Republic.

Based on the evidence on the record, the applicant has not established that her mother would suffer hardship beyond the common results of a relative not qualifying to enter the United States 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 her lawful permanent resident mother 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.

As we have found the applicant ineligible for a waiver under section 212(i) of the Act, no purpose would be served in examining whether the applicant would qualify for a waiver under section 212(d)(11) of the Act for her inadmissibility under section 212(a)(6)(E)(i) of the Act.

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.