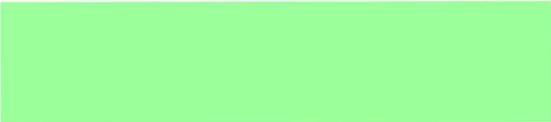




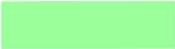
U.S. Citizenship  
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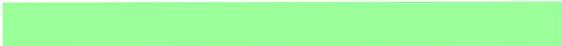
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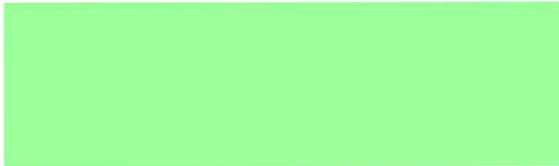
Office: PHILADELPHIA

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,

  
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 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 to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated January 2, 2013.

On appeal, filed on February 1, 2013, but received by the AAO on June 6, 2014, counsel for the applicant contends that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience rises to the level of extreme. With the appeal counsel submits a brief and copies of previously-submitted materials. The record contains statements from the applicant, her spouse and her spouse's mother; letters from the spouse's medical doctor and mental health professionals; research information about mental health; information about the mental health system in the Dominican Republic; and 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 that when applying for a visitor visa to the United States in 2005 the applicant indicated on a Nonimmigrant Visa Application (Form DS-156) that she was married at that time, listed the name of her husband, and stated that her spouse was financing her visit to the United States. Information submitted with the Petition for Alien Relative (Form I-130) filed by the applicant's current husband and with the applicant's application to adjust status based on her current marriage indicated that the applicant had in fact divorced her first husband in 1992. Based on this information the field office director found the applicant inadmissible for fraud or misrepresentation. In the appeal counsel states that the applicant asserts that she represented herself as married only because her former husband, not she, had completed the visa application and checked "married".

As noted in the field office director's decision, the applicant's visa application indicates at multiple places that she was married, including checking number 17 that she was "married", listing her spouse's name, and indicating that he would be paying for the applicant's trip. The form was signed by both the applicant and her ex-husband. The record further reflects that at her visa interview at the U.S. consulate, rather than correcting the information and clarifying that she had in fact been divorced for more than 12 years at that time, the applicant continued to state she was married. In a statement dated March 17, 2010, the applicant confirms that she told the consular officer she was married so she would be able to obtain a visitor's visa. By failing to disclose that she was no longer married when applying for a nonimmigrant visa, the applicant cut off a line of inquiry which was relevant to her eligibility for a visitor visa. Thus we concur with the field office director's determination that the applicant is inadmissible for 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 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 the cumulative effect of emotional and financial hardship on the applicant's spouse would rise to the level extreme. In a letter dated May 2012 the applicant states that her spouse's health is not good as he suffers from depression, his nerves are out of control, and he cannot sleep because of worry about her situation. She also states that her own mother is ill with terminal cancer, but the record contains no documentation about the applicant's mother.

In a letter also dated May 2012, the applicant's spouse states that his health is getting worse every day and he cannot sleep, takes medication, and is constantly worrying about the applicant's deportation because she is the only person he can count on. A letter dated June 2012 from the spouse's mother states that the applicant's spouse receives medical treatment for behavioral problems and is getting better since he married the applicant, as she provides emotional support and

they depend on one another. The mother also states that the applicant counts on her spouse for emotional and economic support.

The record contains several letters from mental health professionals who have treated the applicant's spouse. An October 2012 letter from a psychiatrist states that the spouse had monthly visits from October 2009 to January 2011, when he stopped due to financial hardship, but was to restart in October 2012, although no information about any subsequent visits has been submitted. The letter states that the spouse was diagnosed with major depressive disorder and generalized anxiety disorder, indicates that he was prescribed medication for his condition, and lists medications.

A mental health status evaluation resulting from a June 2012 visit to a psychologist states that a review of the spouse's prior counseling records showed that his medical doctor had referred him for psychiatric treatment because he was unable to control suicidal thoughts, had attempted to commit suicide at the time of his father's death, and had extreme anxiety. The evaluation states that the applicant's situation has a serious psychological impact on her spouse and that since childhood he has had facial tics and uncontrolled spasm-like muscle movements that are symptoms of anxiety. The evaluation states that having no health insurance gives the spouse restricted access to appropriate medical care and that he was not taking medication at that time. The evaluation states that it could become difficult for the applicant's spouse to keep his job, where he has trouble performing because he is preoccupied with worries about the applicant, and that because of his psychiatric history he is at risk to decompensate, possibly commit suicide, or require psychiatric hospitalization.

A December 2010 letter from a psychiatrist states that he had been treating the applicant's spouse since October 2009, when he came for treatment of depression and anxiety, but had no past history of mental illness. The psychiatrist identified the spouse's main stressor as the applicant's immigration proceeding and states that he now had difficulties with sleep and concentration affecting his ability to work and function. A 2009 letter from a medical doctor states that the applicant's spouse experienced an increasing intensity in anxiety and depression because of immigration action that could result in the applicant leaving the country. Documentation from a counseling service includes hand written notes, including a medication log, that, though difficult to read, indicate activity from October 2009 through January 2011.

Having reviewed the preceding evidence we find that it establishes that the applicant's spouse would experience extreme hardship if separated from the applicant. Documentation indicates that the applicant's spouse has a history of mental health issues and sought counseling from October 2009 through January 2011, but did not continue due to financial difficulties. The record shows that in addition to psychotherapy the applicant's spouse has been prescribed medication, that he has improved with the applicant's support, and that the applicant's situation negatively affects him. We therefore find that the applicant has established that her spouse would experience extreme hardship due to separation.

We find, however, that the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to the Dominican Republic to reside with the applicant. The applicant states that life in the Dominican Republic is very difficult in all aspects, but does not

provide detail of what difficulty would specifically affect her spouse. The spouse's mother states that she also depends on her son for support and with personal matters because she is old, and a mental health evaluation states that the spouse's mother depends on him for transportation to medical appointments and grocery shopping and that his brother also depends on him for transportation. No further detail or evidence has been submitted about financial or other support the applicant's spouse provides for his mother or brother and how it would cause hardship to him should he relocate abroad.

The record includes a 2008 World Health Organization report on mental health systems in the Dominican Republic that shows shortcomings, such as only seven percent of people getting access to free psychotropic medicines, a poorly developed first level of care of mental health services, a lack of organized training at facilities, and a low allocation of resources. However, it also notes that part of the country's 10-year plan is upgrading existing mental health services. The record also does not demonstrate that the applicant's spouse would require mental health services if he relocated to the Dominican Republic with the applicant, and the WHO report does not establish that he would be unable to obtain care.

A 2012 mental health evaluation of the spouse concludes that unemployment in the Dominican Republic is extremely high so the applicant's spouse is unlikely to find a job despite good skills and work history. However, no country information has been submitted to the record to support this assertion and there is otherwise no indication that the applicant's spouse will not be able to obtain employment or that he does not have transferable skills he could deploy in the Dominican Republic.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.