U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 2 6 2014 Office: NEBRASKA SERVICE CENTER 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and the appeal will be sustained.

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i). She is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 18, 2013. The AAO found that the record failed to establish the applicant's spouse would experience extreme hardship and dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that the director's decision was in error, and that the applicant's spouse will suffer emotional and financial hardship due to the applicant's inadmissibility.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In this case the applicant submitted a brief further explaining the hardships experienced by the applicant's spouse and has submitted additional documentation in support of the assertions contained therein. The motion satisfies the requirements of § 103.5(a) and we will review the applicant's appeal on its merits.

The record includes, but is not limited to, the following documentation: a brief from counsel; statements from the applicant's spouse, mother and sister; a statement from the applicant's spouse's doctor; medical records pertaining to the applicant's spouse; a statement regarding the psychological hardship of the applicant; medical records pertaining to the applicant; a letter of employment for the applicant's spouse; a letter from the applicant's spouse's landlord; documents related to child support payments paid by the applicant's spouse; bank statements for the applicant's spouse; copies of credit card statements for the applicant's spouse; copies of bills and invoices related to financial obligations of the applicant's spouse; country conditions materials on the Dominican Republic; income tax returns for the applicant's spouse; and background materials on corruption and poverty in the Dominican Republic.

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

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant obtained a backdated stamp in the Dominican Republic in order to obtain re-entry into the United States. The applicant admits that she obtained the false stamp in her passport. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

> (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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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*, 138 F.3d at 1293 (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 entire record was reviewed and all relevant evidence considered in rendering this decision.

On motion, counsel for the applicant states the applicant's spouse is under severe economic strain from having to support two households, his own here in the United States and his spouse in the Dominican Republic. Counsel also notes that the applicant's spouse is responsible for paying child support for his child from a previous marriage. Counsel explains that the applicant's spouse is suffering from emotional hardship in the form of depression due to separation from the applicant, and that this emotional hardship is compounded by the emotionally painful experience of the applicant's miscarriage of their child two years ago.

The record contains a statement from the applicant's spouse explaining the emotional hardship he is experiencing being separated from the applicant. He discusses the pain and hardship of the applicant's miscarriage of their child two years ago and that the separation preventing them from trying to get pregnant again is emotionally painful for him. He further states that he has to pay $122 a week in child support and that he would have trouble finding adequate employment in the

Dominican Republic if he were to relocate because he does not have a post-high school education. He notes that he has gone into debt trying to support two households and meet all of his financial obligations and is struggling with depression and digestive disorders.

A letter submitted into record from the applicant's spouse's doctor states that the applicant's spouse is being treated for depression and digestive disorder. It notes that he is prescribed Pristiq to treat his depression. Along with the statement from his doctor the record contains visitation notes from his doctor's office indicating that he was diagnosed with esophageal reflux and prescribed Nexium. The record also contains lab reports and other medical records to support the applicant's spouse's assertions. We are not qualified to interpret raw medical data but recognize that the documentation supports the applicant's assertions and corroborates statements made by his doctor.

The record also contains statements from a doctor regarding the applicant, stating that she is suffering emotionally due to separation and referencing a miscarriage she had two years ago. A statement from the applicant's OB/GYN states that the applicant suffered a miscarriage on May 12, 2012. Another statement indicates the applicant has been diagnosed with Distimia and that Distemia is a mood disorder. Hardship to an applicant can only be considered as it relates to the qualifying relative, but in this case we recognize that the applicant's condition may result in additional emotional hardship for the applicant while they are separated.

A statement from the applicant's spouse's employer verifies that he is employed in New Jersey and has been working for that company for the last three years. The record also contains pay stubs and tax returns verifying the applicant's spouse's income. The record contains evidence of financial obligations of the applicant's spouse, including a statement of rent from his landlord, phone bills and credit card statements. Credit card statements issued to the applicant's spouse indicate balances of $3,046 and $2,389 for periods in 2013. This evidence corroborates that the applicant's spouse has financial obligations and debt. There are also records pertaining to the child support payments made by the applicant's spouse, corroborating his assertions that he is responsible for supporting his child from a previous relationship.

When the emotional and financial hardships to the applicant's spouse due to separation are considered in the aggregate the record establishes that they rise to the level of extreme hardship.

With regard to hardship upon relocation, counsel states that the applicant's spouse would be unable to find adequate employment in the Dominican Republic that would allow him to support himself and his spouse and meet his child support obligations in the United States. He also states that the applicant's spouse is suffering from depression and esophegeal reflux, and that if he relocated to the Dominican Republic he would have to quit his U.S. job, which provides him medical insurance, and pay for his own medical care in the Dominican Republic. Counsel further asserts that the conditions in the Dominican Republic would pose hardships on the applicant's spouse because of the corruption, economic and environmental conditions. He further notes that the applicant's spouse would have to sever his family and economic ties to the United States, which include his 10 year old son and the employment he has maintained for the last three years.

As noted above, the record corroborates that the applicant's spouse has been employed in New Jersey with the same company for the last three years. There is also evidence of the family ties the applicant's spouse has to the United States, which include a 10 year old son and at least one parent.

The record also contains country conditions materials discussing the conditions in the Dominican Republic. These materials indicate that the Dominican Republic has an imbalanced distribution of income among the tourist areas and surrounding urban areas. Other background materials discuss corruption and that most Dominicans are struggling with crime, unemployment and electrical blackouts.

The record contains sufficient evidence to demonstrate the applicant's spouse is suffering from depression and esophageal reflux. He has been prescribed medication to deal with his conditions and his doctors are located in New Jersey. If the applicant's spouse relocated to the Dominican Republic he would have to disrupt the continuity of care provided by the doctors familiar with his condition and medical history.

When the financial hardship, family ties he would have to sever, his medical conditions and conditions in the Dominican Republis are considered in the aggregate the record establishes the applicant's spouse would experience hardships rising to the level of extreme upon relocation.

The record also establishes that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the

exercise of discretion appears to be in the best interests of the country. " *Id.* at 300 (Citations omitted).

The unfavorable factors in this case include the applicant's misrepresentation of a material fact. The favorable factors include her U.S. citizen spouse, the hardship that her spouse would experience and the lack of any criminal record for the applicant during her residence in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The motion is granted and the appeal is sustained.