



U.S. Citizenship  
and Immigration  
Services

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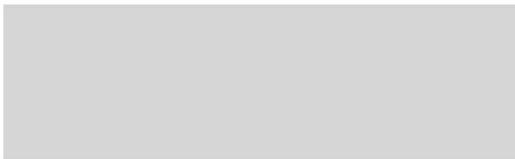
Date: APR 27 2015 Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and (a)(9)(B)(v)

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

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, 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 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, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act to reside in the United States with his U.S. citizen spouse.

The director found that the applicant failed to establish that his spouse would experience extreme hardship as a consequence of his inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director* dated August 18, 2014.

On appeal, the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by failing to give adequate weight to the effect of separation on him and his spouse given the spouse's age and financial situation. Although the applicant indicated in the Form I-290B that additional evidence and/or a brief would be submitted on appeal, no additional evidence or brief was provided. The record contains affidavits from the applicant's spouse and family and financial documentation. 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 apprehended by U.S. Border Patrol Agents upon entering the United States without admission on April 4, 2001, the applicant presented himself as Salvadoran and gave a

name other than his own. The record further reflects that he stated that he was Salvadoran because he had heard that Salvadorans had a special legal status and he would be allowed to enter. Accordingly, the applicant was placed into removal proceedings with a Notice to Appear containing the name [REDACTED] as a native and citizen of El Salvador. He later admitted to his true name and nationality when he appeared before an immigration judge, however, his initial misrepresentation of his identity and nationality render him inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection on or about April 4, 2001, and was placed in removal proceedings where, on October 11, 2001, an immigration judge granted the applicant voluntary departure from the United States until February 8, 2002. The applicant failed to depart until his removal on March 24, 2011, thus accruing unlawful presence from his date of entry until the grant of voluntary departure and from February 8, 2002, until his departure.<sup>1</sup> Accordingly, the applicant is inadmissible for accruing over one year of unlawful presence in the United States, under section 212(a)(9)(B)(i)(II).

Section 212(a)(9) states, in pertinent part:

(A) Certain aliens previously removed.-

<sup>1</sup> The director's decision indicates that the applicant departed on April 14, 2011, however records show the applicant's removal was verified by U.S. Immigration and Customs Enforcement agents on March 24, 2011.

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law,

or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Since the applicant did not depart the United States during the period granted by the immigration judge, the grant of voluntary departure became an order of removal on February 9, 2002, thus also making the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from the date of his last departure. The record contains a denial of the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, dated August 18, 2014. There is no indication that the applicant has filed an appeal of that decision. The applicant has not disputed the inadmissibility findings.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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.

In her affidavit the applicant's spouse states that she and the applicant did everything together, including household chores, errands, dinner, and dancing. She states that since the applicant returned to the Dominican Republic it is difficult for her to get accustomed to not having him with her and she is depressed because of the loss of companionship. She states that she needs the applicant for chores, shopping, and home maintenance, and that it is causing her great strain without him. The record contains letters of support from the applicant's spouse's children asserting that she was happy with the applicant and seems depressed without him.

Although the assertions of the applicant's spouse and her children have been taken into consideration, the record does not contain detail or supporting evidence explaining the exact nature of the spouse's emotional hardships, the severity of the hardships or the effects on her daily life, or how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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 applicant's spouse states that she has many expenses, including mortgages and other bills, and that it would be a financial burden to continue to travel back and forth to the Dominican Republic. The applicant submitted to the record mortgage documentation, bank statements, utility bills, income and property tax documents, and a monthly budget. However, there is no supporting documentation concerning the expense of the applicant's spouse's travel to and from the Dominican Republic. There is also no information concerning whether the applicant provided financial assistance to his spouse while residing in the United States. The record contains a past due utility bill for one of the applicant's spouse's properties, but there is insufficient evidence, overall, to establish that the applicant's spouse is unable to meet her financial obligations without the applicant or that she experiences financial hardship that rises above what is commonly experienced when separated from a spouse. Further, 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).

We find that the record fails to establish that the applicant's spouse suffers extreme hardship as a consequence of being separated from the applicant. In this case, the record does not contain sufficient evidence to show that the hardships faced by the spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

We also find that the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to the Dominican Republic, her native country, to reside with the applicant. The applicant's spouse states that she is afraid to relocate to the Dominican Republic because it is not safe and has much crime. She further states that if she were to relocate she would be separated from her children and grandchildren, and that she would lose her income and be unable to pay the mortgage on two properties as she could not obtain an equivalent income in the Dominican Republic.

Although we recognize that the applicant's spouse would experience some hardship being separated from her adult children and grandchildren if she were to relocate abroad and the record contains letters of support from her adult children, the record does not establish that this separation would cause the spouse extreme hardship. Nor does the record contain any country condition information or other objective evidence to establish that by relocating to the Dominican Republic the spouse would have safety and economic concerns that would rise to the level of extreme hardship.

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 spouse as required under sections 212(i) and 212(a)(9)(B)(v) 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.