



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF G-H-

DATE: DEC. 29, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of the Dominican Republic, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The District Director, New York, New York, denied the application. We dismissed a subsequent appeal and the matter is now before us on motion to reopen and reconsider. The motion will be denied.

In a decision dated April 22, 2014, the Director found the Applicant 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), for procuring admission into the United States by fraud or willful misrepresentation. The Director concluded that the record did not establish the existence of extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserted that his spouse and son would suffer emotional and financial hardship upon separation. The Applicant asserted further that his spouse is a native of the United States who last resided in Dominican Republic, a country with inadequate educational and medical services, at the age of ten.

In our decision, dated February 24, 2015, we found that the record did not establish that the Applicant's spouse would suffer extreme hardship as a result of the Applicant's inadmissibility. We dismissed the appeal accordingly.

On motion, the Applicant submits additional documentation of hardship and states that he believes these new facts, combined with the evidence that has already been submitted, will show that his spouse will suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application and appeal, the Applicant submitted a letter from his spouse, a psychological evaluation of his spouse and son, identity documents, and family photographs. On motion, the Applicant submits a U.S. State Department country report, paystubs, educational documents, medical documents, 2014 tax returns, and information on the Applicant's spouse's commute. The entire record was reviewed and considered in rendering this decision.

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A motion to reopen must state 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 U.S. Citizenship and Immigration Services (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). We find that the requirements of a motion to reopen have been met based on the new evidence submitted. The requirements of a motion to reconsider have not been met.

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:

- (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 immigrant 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 Applicant entered the United States on November 26, 1992 using a passport bearing the name of another individual. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring entry into the United States through fraud or misrepresentation. The Applicant does not dispute this ground of inadmissibility on motion.

In addition, as we stated on appeal, on his Form I-601, dated November 18, 2004, the Applicant stated that he was convicted of possession of 20 grams of marijuana in [redacted] Florida; receiving stolen property in [redacted] New Jersey; and two counts of disorderly conduct in New York. However, the record was not clear as to the Applicant's arrest for possession of marijuana and therefore, unclear concerning whether the Applicant was also inadmissible under section 212(a)(2)(A)(i)(II), for violating a law relating to a controlled substance. Because the record is still not clear and the section 212(h) waiver for criminal and related grounds is less restrictive than the waiver under section 212(i), we will again not address whether the Applicant is also inadmissible under section 212(a)(2)(A)(i)(II), or section 212(a)(2)(A)(i)(I) of the Act for a conviction of a crime involving moral turpitude.

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 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

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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 motion, the record does not establish that the Applicant's spouse will suffer extreme hardship upon separation from the Applicant. The record does not support the Applicant's statements regarding financial hardship as a result of separation. The record shows that the Applicant's spouse works as a teaching assistant for autistic youth and she earns \$16.86 per hour, approximately \$1,100 every two weeks, or approximately \$28,600 per year. Her paystubs indicate that she works approximately 65 hours every two weeks. The record on motion also includes a 2014 tax return showing that the Applicant and his wife earned \$28,479 during that tax year. Thus, the record does not support the previous statements on appeal that the Applicant was the main source of income for the household. As stated on appeal, the record contains a letter dated March 26, 2013, certifying the Applicant as a member of the [REDACTED] with a salary of \$48 an hour, but the record does not include any documentation of the Applicant being paid this salary during a given time period. The previously submitted 2013 tax return shows that the couple earned \$32,093 during that tax year, indicating that the Applicant contributed approximately \$3,500 to the household income. Thus, the record fails to show that the Applicant's spouse would not be able to support the family on her own, without the Applicant. To the contrary, the record currently shows that the Applicant's spouse is by far the main income earner in the household.

On motion, the Applicant also submits a copy of his son's report card. Although the record does include information about the Applicant's son's school's schedule and the Applicant's spouse now being enrolled in college courses, it does not show that a schedule could not be managed where the child is in school or other care and the Applicant's spouse worked and took classes.

In addition, we recognize that the Applicant's family will experience hardships as a result of separation and have taken into consideration the previously submitted psychological evaluation indicating that the Applicant's spouse was diagnosed with adjustment disorder with mixed anxiety and depressed mood, but the evaluation did not contain any treatment recommendations for the Applicant's spouse or child. The current record does not show that the hardship the Applicant's spouse would face as a result of separation, rises beyond what would normally be expected upon the

separation of immediate family members. Thus, the record does not show that the Applicant's spouse would suffer extreme hardship upon separation as a result of the Applicant's inadmissibility.

Furthermore, the record does not establish that the Applicant's spouse would suffer extreme hardship as a result of relocation. On motion, the Applicant asserts that he and his spouse have no family ties in the Dominican Republic, and his spouse has lived most of her life in the United States. The Applicant submits a U.S. Department of State Human Rights Report for the Dominican Republic. The report indicates that the Dominican Republic suffers from numerous human rights issues, especially in regards to certain subsections of their society. The Applicant highlighted the following issues in the report as problems in the Dominican Republic: violence against women, sexual harassment, treatment of immigrants without documentation, sexually exploited children, restrictions on collective bargaining and unions, and a minimum wage of only \$170 per month. The record is not clear if any of these issues would affect the Applicant's spouse or child. The Applicant asserts that his spouse and child would be vulnerable targets as foreigners from the United States with money. The record does not include sufficient evidence to support this claim.

The stated concern of the Applicant's spouse and child not being able to obtain an identity card in the Dominican Republic is not substantiated by the record because it does not show what the process of obtaining a card or status in the Dominican Republic would be for someone married to a citizen of the country. Similarly, the report does not reflect that the Applicant, with his work history, or his spouse, with her experience as a teaching assistant, would be unable to find employment in the Dominican Republic. We also acknowledge that the Applicant's child has asthma and is on medication for his condition, but the record does not show how this medical issue would affect him in the Dominican Republic. Lastly, we note that the evidence that the Applicant's spouse is a part-time college student, and the claims related to loss of educational opportunities for their child and language issues in the Dominican Republic. However, the current record does not show that the hardships faced by the Applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to the Dominican Republic.

We therefore find that the Applicant has not established 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. The motion to reopen and reconsider is denied.

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**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of G-H-*, ID# 14491 (AAO Dec. 29, 2015)