



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: FEB 24 2015

OFFICE: NEW YORK

FILE: [Redacted]

IN RE: [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. 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 District Director, New York, New York 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 Dominican Republic who was found to be inadmissible to the United States pursuant to 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 entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated April 22, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse and son would suffer emotional and financial hardship upon separation from the applicant. Counsel further asserts that the applicant's 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 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. The entire record was reviewed and considered in rendering this decision.

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 [REDACTED] 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 appeal.¹

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*

¹ On a Form I-601, Application for Waiver of Grounds of Inadmissibility, signed by the applicant on [REDACTED] 2004, the applicant states that he was convicted of possession of 20 grams of marijuana in [REDACTED] Florida and receiving stolen property in [REDACTED] New Jersey, in addition to two counts of disorderly conduct in New York. The record is not clear concerning the applicant's arrest for possession of marijuana and therefore, unclear concerning whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(II), for violating a law relating to a controlled substance. In any case, as the section 212(h) waiver for criminal and related grounds is less restrictive than the waiver under section 212(i), we will 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 conviction of a crime involving moral turpitude.

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 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.

The record reflects that the applicant is a 47-year-old native and citizen of Dominican Republic. The applicant’s spouse is a 37-year-old native and citizen of the United States. The applicant is currently residing with his spouse and child in [REDACTED] New York.

Counsel for the applicant asserts that the applicant’s spouse, upon the applicant’s absence, would be a single mother forced to take on an additional job to afford child care for their son. The applicant’s spouse contends that she planned to return to school in the fall and would be unable to do so without the applicant. Counsel also asserts that the applicant’s spouse would have less time to spend with her son if she were raising him alone, which would affect his school work negatively and cause her further hardship. The record does not contain any documentation concerning the applicant’s son’s education or supporting documentation for counsel’s speculation relating to his schoolwork. The record also does not contain any supporting documentation concerning the applicant’s spouse’s educational aspirations, such as confirmation of admission.

The record reflects that the applicant’s spouse is employed as a teacher’s assistant for autistic children. The psychological evaluation for the applicant’s spouse and child states that the

applicant is the main economic provider for the home, as an asbestos worker. The record contains a letter dated March 26, 2013, certifying the applicant as a member of the [REDACTED] with a salary of 48 dollars an hour. The record also contains a tax return for the applicant and his spouse for 2013, indicating a joint income of 32,093 dollars. The record does not contain W-2 forms for that year, but a letter addressed to the applicant's spouse, dated September 9, 2013, contains an offer of employment as an assistant teacher for 25,500 per year, for approximately 32.5 hours of work per week.

The record contains monthly household financial documentation including a lease and bills for electric, cable and phones, all totaling under one thousand dollars. There is insufficient information to determine that the applicant's spouse would be unable to maintain her financial obligations in the absence of the applicant. The record contains an offer of employment for an assistant teacher position for the applicant's spouse and the record reflects that the applicant's son is eleven years of age. There is no supporting documentation, such as work and school hours, indicating that the applicant's spouse would be unable to care for her son at the end of their respective school days. There is also insufficient information to demonstrate that the applicant's spouse would be forced to take on additional employment.

Counsel for the applicant asserts that the applicant's spouse is suffering from stress, anxiety and depression and these hardships would be exacerbated by separation from the applicant. The applicant's spouse asserts that her husband is her backbone and their son waits for the applicant before he goes to sleep at night. The applicant's spouse also states that she doesn't want her son to experience the ill effects of growing up without a father. The record contains a psychological evaluation of the applicant's spouse and child stating that the applicant's spouse indicated that the applicant is a good man and father who helps her a lot with everything.

The applicant's spouse was diagnosed with adjustment disorder with mixed anxiety and depressed mood. The psychological evaluation states that the presence of a father has a fundamental impact in the life of children and notes that the applicant's child's depictions demonstrate typical indicators of personal insecurity, inwardness and need of support. It is noted that the applicant's child is not a qualifying relative in the context of this application so that any hardship he would suffer will be considered only insofar as it affects the applicant's spouse. The evaluation did not contain any treatment recommendations for the applicant's spouse or child.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse has been in the United States since the age of ten and would face worries in moving to a foreign country. The applicant's spouse does not make any assertions in her submitted letter concerning any hardships she would experience upon relocation to Dominican Republic. However, the psychological evaluation states that she was

raised by her parents in Dominican Republic from age one to nine, returning to the United States when she was ten. The evaluation also indicates that the applicant's spouse stated that she has nothing in Dominican Republic, the economy is bad, there is crime and that she does not possess a local identification card for that country.

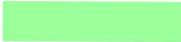
The psychological evaluation states that the applicant's spouse and son's primary language is English and the applicant's son would face a poor educational system and medical services in Dominican Republic. The evaluation also indicates that the applicant's son has asthmatic issues. The psychological evaluation further states that there are high unemployment rates, discriminatory labor practices and criminality in Dominican Republic. The record does not contain any supporting documentation with medical diagnoses and treatment needs for any of the applicant's family members. The record also does not contain any supporting documentation concerning background country conditions in Dominican Republic or the applicant's spouse's inability to obtain an identification card. The U.S. Department of State has not issued any travel warnings for Dominican Republic and there is no information concerning the extent to which any extended family members reside in Dominican Republic who could and would assist in the relocation of the applicant's family. 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)).

There is insufficient evidence in the record to 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 Dominican Republic.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 U.S. citizen spouse as required under section 212(i) of the Act.

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Page 7

NON-PRECEDENT DECISION

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.