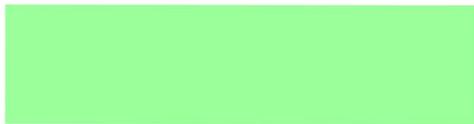


(b)(6)



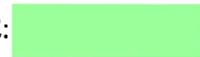
U.S. Citizenship
and Immigration
Services



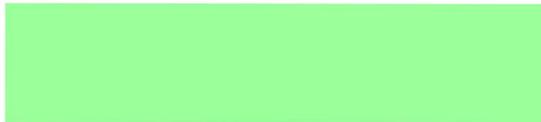
DATE: JAN 13 2015

Office: NEW YORK

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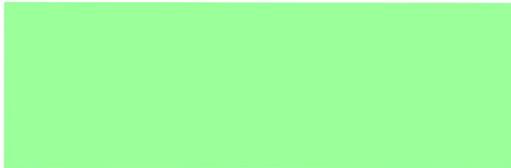


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, New York, New York. 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 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 a visa and admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse and children are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The Acting District Director found that the applicant had failed to establish extreme hardship to a qualifying relative, and she denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Acting District Director*, dated August 15, 2013.

On appeal, filed September 17, 2013 and received at the AAO on October 17, 2014, counsel details the hardship that the applicant's spouse would experience if the waiver application is not approved and provides new evidence of hardship. *Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated September 16, 2013.

The record includes, but is not limited to, the applicant's spouse's statement, medical records, financial records, a psychological evaluation of the applicant and her spouse, country-conditions information about the Dominican Republic, and letters of support. 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, that:

- (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:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [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 [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 the applicant obtained a B-1/B-2 nonimmigrant visa from the U.S. Embassy in Santo Domingo with a false name, [REDACTED] and she used this visa to procure

admission to the United States on March 9, 2003.¹ She is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring a visa and admission to the United States through willful misrepresentation of a material fact. The applicant does not contest the finding of inadmissibility.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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).

¹ The applicant's passport appears to include a March 29, 2003, entry stamp for the Dominican Republic that the Acting District Director did not address in her denial decision. Assuming the stamp is valid and the applicant returned to the Dominican Republic on March 29, 2003, it is not clear when and how she subsequently re-entered the United States.

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.

We will first address hardship to the applicant’s spouse if he relocates to the Dominican Republic. The applicant’s spouse, a native of the Dominican Republic, addresses his strong ties to his family and life in the United States. He states that he came to the United States at the age of six; his two children, mother, and siblings live in the United States; he cannot leave his family; he is accustomed to American culture; and he does not have any ties to the Dominican Republic. According to a psychological evaluation dated April 19, 2013, the applicant's spouse claimed he must care for his mother, who has sickle cell anemia, by sometimes paying her rent, taking her to the doctor and shopping for her groceries; he has two young sons who live with their mother and need him.

To address the hardship her spouse may experience related to country conditions, the applicant submits a copy of the 2012 U.S. Department of States Human Rights Report for the Dominican Republic. The report states that the Dominican Republic is a representative constitutional democracy; and human rights problems include, but are not limited to, discrimination against Haitian migrants, discrimination based on sexual orientation, substandard prison conditions and inadequate enforcement of labor laws. The applicant does not explain how the report may apply to her spouse’s particular circumstances and the potential hardship he may experience in the Dominican Republic.

Addressing the financial hardship he would experience if he were to relocate to the Dominican Republic, the applicant's spouse states that he is a security system installer in the United States; he would not be able to find the same type of job in the Dominican Republic, as it is not in demand, and

he is not familiar with the systems used there. He states that the economic situation is not strong in the Dominican Republic and he would not be able to find work. He mentions the likely lack of employment opportunities due to discrimination based on his skin condition. The record includes a report about an “optimistic” forecast of the Dominican Republic’s gross domestic product in 2013 and a Wikipedia list of national unemployment rates, showing that the Dominican Republic’s was 14.4% in April 2010.

Concerning the medical hardship the applicant’s spouse would experience in the Dominican Republic, counsel states that the Acting District Director minimized the severity of the applicant’s spouse’s medical condition in her denial decision. A doctor states that the applicant’s spouse has severe psoriatic plaque throughout 80% of his body. The applicant submits articles describing severe plaque psoriasis as a “chronic relapsing, inflammatory skin disorder with strong genetic basis.” The applicant’s spouse states that he has “patches of red thickened skin that are scaling and peeling” on his hands, arms and elbows; and he has large bluish lesions on his legs and thighs. He submits photographs to support his claims. He also states that his skin condition would worsen in the Dominican Republic due to the very hot and dry weather.

The applicant's spouse states that he can prevent or delay the spread of his psoriasis through UV treatment, injections and corticosteroids, which increase his risk of developing cancer; a physician therefore must “constantly” monitor his treatment; he would not be able to afford medical care in the Dominican Republic; his doctors are in the United States, and “it took [him] a long time to fully trust and confide in them [due to his] insecurities”; and he would not have access to the same medication that he currently takes. The applicant’s spouse’s physician states that the applicant’s spouse’s severe psoriasis causes severe itchiness; it can be a debilitating condition; it requires long-term treatment; and he is being treated with prescription medication and topical creams. The record includes prescription notes for severe psoriasis and articles that explain how sun can trigger or worsen psoriasis outbreaks and increase the risk of skin cancer.

The record reflects that the applicant’s spouse has family in the United States and does not have ties to the Dominican Republic. However, the record does not include documentary evidence of the custody status of his two children from a previous relationship and it lacks sufficient evidence of his involvement in their lives. The record also does not include documentary evidence of his mother’s claimed medical issue. While the record reflects that the applicant's spouse has a significant medical condition, it is not clear as to whether he could receive suitable treatment in the Dominican Republic or the climate there and how it would affect him. The record, moreover, lacks sufficient documentary evidence to establish that he would experience financial hardship in the Dominican Republic. Based on the record, we find insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in their totality, establish that the applicant’s spouse would experience extreme hardship upon relocation to the Dominican Republic.

We will now address hardship to the applicant’s spouse if he remains in the United States without her. The applicant’s spouse states that he loves the applicant and his step-son; they are a united family; she provides with him with emotional support; she gives the strength he needs to keep fighting; he is a very insecure person due to having severe psoriasis since the age of 15; there is no

cure and he will need treatment for the rest of his life; he had very low self-esteem before he met the applicant; the mother of his children insulted him about his skin condition and led him to believe that no one would love him due to his appearance; he became very depressed upon separation from the mother of his children; the applicant pushed him to seek the medical care that he needs; she helped him realize he should be grateful for his life and to re-establish a bond with his children; and she gives him confidence. The psychologist who evaluated the applicant's spouse states that his psychological tests suggest a severe level of anxiety and a moderate level of depressive symptomatology. The record includes affidavits detailing the closeness of the applicant to her spouse, and the positive effect she has had on him.

Addressing his financial hardship if he were to remain in the United States without the applicant, her spouse states that his income is insufficient to cover the family's household expenses, and the applicant helps pay for the rent and other household bills. The record includes numerous bills for the applicant and her spouse, many of which are only in the applicant's name, and their 2012 federal tax return, which reflects an adjusted gross income of \$15,679.

The record reflects that the applicant and her spouse have a close relationship, and she has played a critical role in improving her spouse's emotional state, in part by encouraging him to seek medical help for his condition. Currently, the applicant's spouse is experiencing psychological hardship, as described in the psychological evaluation, and this stress, depression and anxiety exacerbate his medical condition, which was debilitating in the past. Moreover, the record indicates that the applicant is paying household bills. As such, when evaluating this in conjunction with the reported gross income from their tax return, the applicant's spouse would experience some financial hardship. Considering the applicant's spouse's medical condition and the effect it has had on his ability to function in society and cope with his responsibilities, his financial hardship, and the normal difficulties resulting from separation from a spouse, we find that the applicant's spouse would experience extreme hardship if he remained in the United States.

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.

The documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether she merits a waiver as a matter of overall discretion.

(b)(6)

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.