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

H6

FILE: [REDACTED] Office: NEW YORK, NY

Date: **FEB 02 2011**

IN RE: Applicant: [REDACTED]

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

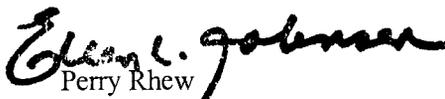
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit, and 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. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the District Director*, dated December 14, 2007. On appeal, counsel contends the applicant established the requisite hardship. Specifically, counsel contends the applicant's wife, [REDACTED] has lived her entire life in the United States and would suffer extreme hardship if she moved to the Dominican Republic with her husband considering the country conditions there. In addition, counsel contends [REDACTED] would suffer extreme financial and emotional hardship if she remained in the United States without her husband.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on [REDACTED] an affidavit and two declarations from [REDACTED] letters from [REDACTED]'s physician; a psychological evaluation of [REDACTED] copies of [REDACTED]'s medical records; letters from the applicant's church; a copy of the U.S. Department of State's Background Note on the Dominican Republic and other background materials; letters from the applicant's and [REDACTED] employers; copies of tax and financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

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

(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 [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

In this case, the applicant concedes that he entered the United States on [REDACTED] with a fraudulent I-551/Alien Registration stamp. *Motion to Reopen and Reconsider, Deposition of [REDACTED]* dated June 8, 2005. The record contains a copy of the fraudulent I-551. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. In addition, the applicant accrued unlawful presence from [REDACTED] until [REDACTED], [REDACTED] when he filed an Application to Register Permanent Resident or Adjust Status (Form I-485). Accordingly, he is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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 wife 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the

United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the applicant’s wife, [REDACTED], states that her entire immediate family, including her parents, her son, her grandson, and her three siblings, live close to her in the United States. She states that she is her parents’ caretaker. In addition, she states that she had an extremely abusive relationship with her son’s father and that her son, who is [REDACTED], is irresponsible and angry. [REDACTED] states that she had to get a protection order against her son, but that she still loves him and hopes and expects to reconcile with her son “when he gets a little older and matures.” She states that her son fathered a child last year with a woman is also an irresponsible and immature teenager, and that she will not be able to raise her grandchild if she moves to the Dominican Republic with her husband. Furthermore, [REDACTED] states that she suffers from dangerously high blood pressure despite taking medication. She states that because she felt so much stress due to her husband’s immigration case, she was hospitalized for two days as her blood pressure was out of control. She states that the quality of medical care in the Dominican Republic is poor. Moreover, [REDACTED] contends she would suffer extreme economic hardship if her husband’s waiver application were denied. She states that her husband’s income pays for about half of her basic necessities. [REDACTED] further contends that she would have an extremely difficult time finding a job in the Dominican Republic, particularly considering she does not read or write Spanish and never finished high school. *Affidavit of [REDACTED] [REDACTED] dated March 14, 2008; Sworn Declaration of [REDACTED] [REDACTED] dated April 6, 2006; Letter from [REDACTED] [REDACTED], dated August 21, 2003.*

A letter from [REDACTED] physician states that [REDACTED] has a history of hypertension and hyperlipidemia. The letter also states that [REDACTED] was admitted to the hospital in June 2007 due to chest pain. *Letter from [REDACTED] [REDACTED], dated February 21, 2008.* A letter from another physician states that [REDACTED] has had a cough, chest pain, and dyspnea on exertion for many months, possibly years. The physician concludes [REDACTED] has costochondritis, that the cough is due to post-nasal drip, and the dyspnea is due to a combination of chest pain and cough. The physician recommended [REDACTED] do stretching exercises for the chest wall muscles and prescribed a

medication for post-nasal drip. *Letter from* [REDACTED] dated October 10, 2007; *see also Letter from* [REDACTED] dated October 2, 2002 (indicating [REDACTED] should be re-examined in three months due to a history of bilateral breast masses).

The record also contains two letters from [REDACTED] psychiatrist. According to the psychiatrist, [REDACTED] has been under his care since 2002 for panic attacks, insomnia, anxiety, migraines, headaches, and depression. The psychiatrist states that [REDACTED] receives psychotherapy every 2-4 weeks. According to the psychiatrist, “[REDACTED] is in a cons[an]t state of anxiety . . . [and] is also suffering from severe panic attacks.” The psychiatrist states that she “is unable to cope with the problems in her everyday life.” *Letters from* [REDACTED], dated February 23, 2006, and June 6, 2005.

A psychological report in the record states that [REDACTED] son, [REDACTED] has serious behavioral and mood problems. The report indicates that [REDACTED] believes that her son was traumatized due to the abuse she experienced when they lived with her son’s father. According to the psychologist, [REDACTED] suffered from physical, verbal, and emotional abuse. In addition, the psychologist states that [REDACTED] reported having difficulty making everyday decisions without an excessive amount of advice and reassurance from her husband. [REDACTED] reported that she needs to speak to her husband many times during the day and that she deeply fears the loss of his support and approval. She reported that she would be totally overwhelmed if she were alone and her husband were deported. The psychologist diagnosed [REDACTED] with Adjustment Disorder with Mixed Anxiety and Depressed Mood, Major Depressive Disorder, and Posttraumatic Stress Disorder. *Psychosocial Report by* [REDACTED] dated January 23, 2008.

Upon a complete review of the record, the AAO finds that [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The record shows that [REDACTED] has been receiving regular mental health treatment for panic attacks, insomnia, anxiety, migraines, headaches, and depression for at least four years. *Letters from* [REDACTED] *supra*. According to [REDACTED] psychiatrist, [REDACTED] is unable to cope with problems in her daily life. *Id.* In addition, the psychosocial evaluation in the record indicates that due to past abuse, [REDACTED] is extremely dependent on her husband and has difficulty making everyday decisions by herself. *Psychosocial Report by* [REDACTED] *supra*. According to the psychosocial evaluation, [REDACTED] also suffers from Posttraumatic Stress Disorder as a result of the physical, verbal, and emotional abuse she suffered in a previous relationship. *Id.* Furthermore, the record shows that the applicant has a history of treatment for hypertension, hyperlipidemia, breast masses, cough, chest pain, and dyspnea, and that she has been hospitalized for chest pains as recently as [REDACTED]. *Letters from* [REDACTED] *supra*. Considering these unique factors cumulatively, particularly the past abuse she experienced, the AAO finds that the effect of separation from the applicant on [REDACTED] who needs to speak to her husband many times every day, relies on him to make everyday decisions, and would be totally overwhelmed without his constant support and approval, goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to the Dominican Republic to avoid separation would be an extreme hardship for [REDACTED]. The record shows that [REDACTED] receives regular mental health treatment for her numerous mental health problems. In addition, the record shows that the applicant has numerous health conditions and the applicant has submitted documentation indicating that health care in the Dominican Republic is "precarious and underfunded." *Healthcare in Dominican Republic*, dated July 7, 2007. The AAO takes administrative notice that the U.S. Department of State states that "the quality of [medical] care can vary greatly outside major population centers," and that outside of the capital, "emergency services range from extremely limited to nonexistent." *U.S. Department of State, Country Specific Information, Dominican Republic*, dated June 22, 2009. In addition, many medical facilities do not have staff members who speak or understand English and the availability of prescription drugs varies. *Id.* Furthermore, the AAO recognizes that [REDACTED] was born in the United States, and, according to [REDACTED], she does not read or write Spanish. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she moved to the Dominican Republic is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the [REDACTED] factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit and the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: the extreme hardship to the applicant's wife if he were refused admission; a letter of support from the applicant's church; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.