identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

#6

[redacted]

DATE: SEP 21 2012 OFFICE: SANTO DOMINGO, D.R. FILE: [redacted]

IN RE: Applicant: [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), and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, the Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission through misrepresentation. The applicant also was found to be inadmissible pursuant to 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 seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest these findings of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182 (a)(9)(B)(v) and (i), in order to reside with his wife and child in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated November 9, 2010.

On appeal, the applicant asserts that the denial of his waiver application has caused his wife to suffer extreme hardship and depression as evidenced by the presented medical documentation. The applicant also asserts that his U.S. citizen daughter and two lawful permanent resident children need his support. *See Form I-290B, Notice of Appeal,* dated December 10, 2010.

The record includes, but is not limited to: a letter of support from the applicant's spouse; identity and medical documents; and photographs. 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) 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.
>
> ...
>
> (iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having presented to U.S. immigration officials, on March 4, 2005, a lawful permanent resident card and a counterfeit

driver's license that did not belong to the applicant. The record supports this finding, and the AAO concurs that this misrepresentation was material. Thereby, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant was found to be further inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accumulated unlawful presence from February 14, 2003 until his departure on April 1, 2005,
pursuant to the Immigration Judge's order of voluntary departure issued on March 16, 2005.[1] The record also supports this finding, and accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

> (1) The Attorney General [Secretary of Homeland Security] may, in the discretion of the [Secretary of Homeland Security], 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 of Homeland Security] 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration Appeals (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

---

[1] The AAO notes that the applicant had until March 23, 2005, to comply with the Immigration Judge's voluntary departure order. As the record reflects that the applicant did not timely comply, the Immigration Judge's voluntary departure order became a final order of removal.

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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

The applicant's spouse contends that she will continue to suffer extreme financial hardship in the applicant's absence as her constant travel back and forth to visit the applicant with their daughter has caused an immense burden on their finances. She also contends that she does not want their daughter to grow-up without him, to help guide her in becoming a role mode to the community

and a good citizen. She further contends that she will suffer extreme emotional hardship as her family will be torn apart, undermining her will to live. She wishes that she and the applicant can realize all of their dreams together: live as a family, have a home, and grow old together.

Although the applicant's spouse may experience some financial, emotional, and medical hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record does not include any evidence of the applicant and his spouse's financial obligations or of the economic and labor conditions in the Dominican Republic, or demonstrating the applicant's inability to contribute to the support of his and his spouse's households. And, although the record indicates that the applicant's spouse is being treated for bronchial asthma, Post-Traumatic Stress Disorder (PTSD), depression, and bipolar depression, and has undergone a biopsy of her breast, the record does not include any discussion concerning the specific type of treatment that the spouse is receiving for her current physical and mental health conditions or indicating whether the applicant's presence would be advantageous with such treatment. *See Medical Letter Issued by* [redacted] *RPA-C*, dated December 9, 2010; *see also Medical Records*, dated October 12, November 11, and December 9, 2010. Moreover, the record does not include any discussion concerning the evaluative methods for making such diagnoses of the spouse's mental health. Absent an explanation in plain language from the treating medical and mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is unable to reach conclusions concerning the severity of a current physical or mental health condition or the treatment needed.

The AAO notes the concerns regarding the applicant's spouse's financial obligations as well as her physical and mental health conditions, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

The applicant's spouse contends that she and the applicant's children will suffer extreme hardship if they were to relocate to the Dominican Republic to be with the applicant because there are no opportunities for them to grow, and they just want the opportunity to work and live honorable lives.

The AAO finds that the record does not establish that any hardship that the applicant's family may experience upon relocating to the Dominican Republic goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. Although the applicant's spouse is a native of Puerto Rico, the record indicates that the spouse has spent time in the Dominican Republic, and thereby, should have reduced difficulty in acclimating to the culture and society there. *See* Biographic Information (Form G-325) (indicating that the applicant's spouse was married and divorced from her first husband in [redacted] Also, the record indicates that the applicant's spouse's mother is a native of the Dominican Republic. *Id.* Yet, the record does not include any evidence whether the spouse still has familial or social ties there. Moreover, the AAO notes that the record does not include any evidence of economic, political, or

social conditions in the Dominican Republic and their impact on the applicant's spouse. Accordingly, the AAO cannot conclude that the record establishes that the spouse's hardship would go beyond the norm.

Although the applicant's spouse may experience some hardship as a result of relocation to the Dominican Republic to be with the applicant, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.[2] 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 proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the record indicates that the applicant may have initially identified himself as a U.S. citizen when he was approached by U.S. immigration officials on March 4, 2005. If so, the applicant could be subject to the inadmissibility provisions under section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for having falsely claimed U.S. citizenship. Although the applicability of this inadmissibility ground may have bearing on the applicant's eligibility for future immigration benefits, the AAO will not reach a discussion on the merits of this issue as the appeal will be dismissed for the above-stated reasons.

ORDER: The appeal is dismissed.

---

[2] As the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, he also has failed to establish extreme hardship to his qualifying relative under section 212(a)(9)(B)(v) of the Act.