U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 2 1 2013 Office: HARTFORD

IN RE: Applicant:

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

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a request 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,

Michael Shumway

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hartford, Connecticut, and 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 under 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 procured admission to the United States through fraud or misrepresentation, 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 over one year. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act in order to remain in the United States with her U.S. citizen spouse and her children.

The field office director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated August 13, 2012.

On appeal, the applicant contends that the field office director erred in finding her inadmissible under section 212(a)(6)(C)(i) of the Act. She states that although she presented a false Puerto Rican birth certificate when she entered the United States in 1991, she responded truthfully to questions about that entry. Therefore, she contends that she should not be found inadmissible for misrepresenting the circumstances of her entry during interviews with immigration officers.

The record includes, but is not limited to: statements from the qualifying spouse and the applicant's daughter; letters from the qualifying spouse's father and employer; a letter regarding the qualifying spouse's enrollment in a GED program; tax records; and bills and bank statements. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

In the present case, the record reflects that the applicant entered the United States at San Juan, Puerto Rico on or about August 28, 1991 by presenting false Puerto Rican birth certificates for herself and her son, [redacted] On September 21, 1996, she married [redacted] a U.S. citizen, who later filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The applicant also filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on November 27, 1996. In an interview regarding that application, the applicant testified that she had entered the United States in 1991 by presenting a fake Puerto Rican passport for which she had paid $100. While the applicant's Form I-130 and Form I-485 were pending, she departed the United States with an approved form I-512, Authorization for Advanced Parole, from August to September 2000. On August 7, 2001, the Form I-130 was denied due to the applicant's failure to submit sufficient evidence of her divorce from her previous marriage.

The applicant subsequently obtained a judgment of divorce from her previous marriage as well as an annulment of her marriage to [redacted]. On February 18, 2004, she was placed in removal proceedings through the issuance of a Notice to Appear. On September 25, 2004, she married [redacted] a U.S. citizen who is now the applicant's qualifying spouse. [redacted] filed a Form I-130 on the applicant's behalf on April 27, 2005 and that application was denied due to the failure of the applicant and [redacted] to appear for the interview. [redacted] filed a second Form I-130 on the applicant's behalf on January 12, 2010 and that petition was approved. The applicant subsequently filed a Form I-485 and the removal proceedings against her were terminated so that she could seek adjustment of status.

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[1] The applicant may also be inadmissible under section 212(a)(6)(E) of the Act for alien smuggling because she assisted her son in entering the United States in violation of law through the use of a false birth certificate. Section 212(a)(6)(E) of the Act provides, in pertinent part:

> (i) In General- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

However, because the incident involved only her son, she would be eligible for a waiver under section 212(d) of the Act, which provides, in pertinent part:

> (11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

On June 1, 2011, the applicant was interviewed in connection with her application for adjustment of status. During that interview, she testified that she had entered the United States without inspection through Puerto Rico on August 28, 1991.

The applicant has failed to meet her burden of demonstrating that she is not inadmissible. She claims that during her interview on June 1, 2011, she was questioned only about the location of her entry into the United States, not her means of entry. She also states that, during previous interviews with USCIS, she truthfully testified that she had entered with a false birth certificate. Therefore, we find sufficient evidence to support a finding that she sought admission to the United States through fraud or willful misrepresentation of a material fact and is inadmissible under section 212(a)(6)(C)(i) of the Act.

The field office director also found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. Section 212(a)(9) of the Act provides, in pertinent part:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
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> (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.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally,* the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

However, as discussed above, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. She is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act, which provides:

> (1) The [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.

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 herself can only be considered insofar as it causes extreme hardship to her qualifying relative. The only qualifying relative in this case is the applicant's spouse. 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 (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 U.S. 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 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 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.

The qualifying spouse claims that he would suffer extreme hardship if the applicant's waiver application were denied. He states that he has "suffered extreme depression" due to the applicant's ongoing immigration problems. He asserts that he was prescribed medication for depression on one occasion and that he has struggled to maintain employment. He also alleges that he has severe anxiety for which he has been hospitalized on two occasions. Additionally, the qualifying spouse contends that he was fired from his job at because he missed work too often to accompany the applicant on her immigration interviews.

Additionally, the qualifying spouse claims that he would experience extreme hardship if he were forced to raise the applicant's three children on his own. He states that he is close to the applicant's children and that they depend on him and look up to him as a father figure. At the time he wrote his statement, the applicant's 19 year-old daughter, was pregnant with her first child and was living with the applicant and the qualifying spouse. The qualifying spouse fears that the applicant would be "devastated" if she missed the birth of her grandchild and believes he would be unable to support Tracy and her baby on his own. The qualifying spouse also states that the applicant's eldest son, would be depressed if the applicant were removed and that the qualifying spouse would thereby experience extreme hardship because he would be unable to "compensate for the loss of his mother." Finally, the qualifying spouse notes that the applicant's youngest son, who was seven years old at the time he wrote his statement, depends on both the applicant and the qualifying spouse for emotional and financial

support and "needs both of his parents to guide and support him." The qualifying spouse feels that separation from the applicant "would have devastating effects on emotional development, especially since his biological father has not played a role in his life." The qualifying spouse also notes that has asthma and sometimes suffers severe asthma attacks.

The qualifying spouse also states that he would be unable to relocate to the Dominican Republic. He notes that the applicant's children depend on his assistance here. He worries that the educational and medical systems in that country are inferior to those in the United States and that the applicant's children would not have the same opportunities if they were to relocate. He also believes he would be unable to "maintain their standard of living necessary to help everyone." He also states that he was eventually re-hired at and that he now assists his 60-year-old father there. He explains that his father has arthritis in his left knee which prevents him from standing for long periods of time, so the qualifying spouse assists him in completing his job responsibilities. He feels he would be unable to leave the United States because his father needs his assistance. Additionally, the qualifying spouse asserts that he plans to earn his GED and hopes to become a police officer. He alleges that in preparation for applying to be a police officer, he volunteered with the Hartford Police Department in 2008 and 2009 by providing drinks and snacks to the department's baseball league.

The AAO finds that the applicant has failed to demonstrate that her qualifying spouse would experience extreme hardship on separation from the applicant if she were removed. Although the qualifying spouse claims that he suffers from severe depression and anxiety related to the applicant's immigration situation and that he has been hospitalized as a result, there is no evidence in the record to support that claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Furthermore, while the qualifying spouse contends that he would struggle to support the applicant's children, there is no information regarding the family's expenses to support that claim. Additionally, despite the qualifying spouse's claim that he would experience extreme hardship due to the emotional difficulties the applicant's children would suffer on separation from their mother, the evidence in the record is insufficient to show that any such hardship would rise above that which is normally expected from the removal or inadmissibility of a close family member. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of O-J-O-,* 21 I&N Dec. at 383. Also, the applicant has not addressed the possibility that her children could relocate with her, leaving the qualifying spouse in the United States without the responsibility of caring for his step-children on his own.

Additionally, the applicant married her qualifying spouse on September 25, 2004, after she had been placed into removal proceedings. Her spouse was therefore aware at the time he married the applicant that she might be removed, which goes to his expectations at that time and impacts the determination of hardship. *See Cervantes-Gonzalez*, 22 I&N Dec. at 568. The qualifying

spouse states in his affidavit that since he met the applicant, "she has always had immigration problems."

The applicant has also failed to demonstrate that her qualifying spouse would suffer extreme hardship if he were to relocate to the Dominican Republic with the applicant. The qualifying spouse's concerns that he would be unable to maintain the family's current standard of living in the Dominican Republic and that the medical and educational opportunities would be inferior there are common results of inadmissibility which do not rise to the level of extreme hardship. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. Additionally, while the qualifying spouse claims that the applicant's youngest child, Aldyn, suffers from asthma for which he requires treatment, there is no evidence of his medical condition in the record. Furthermore, the U.S. Department of State indicates that "adequate medical facilities can be found in large cities" in the Dominican Republic. *U.S. Department of State, Country Specific Information: Dominican Republic*, dated March 27, 2013. While the qualifying spouse also claims that he assists his father in his job at the the record does not demonstrate that his father's arthritis would prevent him from keeping his job without the qualifying spouse's help. Finally, the record does not support the qualifying spouse's claim that his educational pursuits would prevent him from relocating. While he submitted a letter indicating that he had enrolled in a GED program, the field office director's decision noted evidence that the qualifying spouse never attended classes.

The record also contains evidence of hardship to the applicant's daughter states that the applicant provides her with emotional and financial support and that she does not want to be separated from her. She also asserts that she would be unable to relocate to the Dominican Republic because she would "refuse to raise [her] child there," would be forced to abandon her education, would be separated from her friends and family, and is unfamiliar with the culture there. However, the applicant's daughter is not a qualifying relative for purposes of a waiver under section 212(i) of the Act so hardship to her can only be considered to the extent that it would cause extreme hardship to the qualifying spouse. In this case, the evidence is insufficient to show that any emotional or financial hardship Tracy might face if the waiver application were denied would create extreme hardship for the qualifying spouse.

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 an application for waiver of grounds of inadmissibility under section 212(i) 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.

ORDER: The appeal is dismissed.