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

**U.S. Citizenship and Immigration Services**

(b)(6)

DATE: JUN 2 2 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Field Office Director, Boston, Massachusetts, 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 procuring a visa to the United States through fraud or the willful misrepresentation of a material fact. The applicant's spouse is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her spouse.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated August 26, 2014.

On appeal, the applicant, through counsel, asserts that she did not willfully misrepresent a material fact and is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief in Support of Appeal*, received October 24, 2014.

The record includes, but is not limited to, counsel's brief, statements from the applicant and her spouse, statements from family and friends of the applicant's spouse, and financial records. 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, that:

> 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:

> The Attorney General [now the Secretary 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 applied for a U.S. non-immigrant visitor's visa on or around December 5, 2009, when she was not married, and indicated on the visa application form that she was married. The applicant states that it is a cultural colloquialism to refer to her children's father and her "common law" husband as her "husband"; the Dominican Republic recognizes common-law marriage; the true facts of the applicant's relationship to her children's father would not have made

her inadmissible; and her misrepresentation did not cut off a line of inquiry that would have resulted in a proper determination that she was inadmissible. The applicant states that it is a common practice in the Dominican Republic to refer to your partner or long-term boyfriend as "spouse," especially when there are children involved in the relationship; she referred to her children's father as her "husband" on a daily basis; and she incorrectly referred to her children's father as her "spouse" when the U.S. consular officer asked her if she was married. She states that it was never her intention to lie to the consular officer or in any of her applications, and that she was never legally married to her children's father.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for a visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

We find that the applicant's misrepresentation about her marital status tended to cut off a line of inquiry, which would have been relevant to her eligibility and which might well have resulted in a proper determination that she was inadmissible. Specifically, as noted in the waiver denial decision, had the applicant truthfully answered that she was not married, the consular officer may have inquired about the applicant's other ties to the Dominican Republic and her intention to return to the Dominican Republic. If the consular officer had known that the applicant was single, the consular officer may have found her inadmissible for lack of ties to the Dominican Republic and presumed immigrant intent.

We will now address whether the applicant's misrepresentation was willful. The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). We are unable to find that an applicant is inadmissible for making a willful misrepresentation of a material fact without "clear, unequivocal, and convincing evidence." *See Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

Though the applicant states she did not intend to misrepresent her marital status to receive an immigration benefit, the record does not include sufficient documentary evidence to support her claim. Specifically, the record does not contain supporting documentary evidence that it is a common practice in the Dominican Republic to refer to one's partner as "spouse," or that the Dominican Republic permits common-law marriage, or that the applicant and her children's father were in a common-law marriage. The record includes no evidence showing the applicant was incapable of exercising her judgment during the visa-application process or was unaware of her actions. As such, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring a non-immigrant visa by willful misrepresentation of a material fact.

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, in this case the applicant's 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 (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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).

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 qualifying relative upon relocation to the Dominican Republic. The applicant's spouse states that he is close to his children and mother, and after becoming estranged, he has worked hard to re-establish a relationship with them; he would risk losing his lawful permanent resident status; he would not be able to see his children in the United States if he lost his permanent resident status; and he would not be able to work in the same line of employment and earn the same amount in the Dominican Republic as he does in the United States.

The record does not include birth certificates for the individuals who claim to be the applicant's spouse's children. The record also does not include sufficient documentary evidence to establish the level of involvement of the applicant's spouse in his children's lives. In addition, the record lacks supporting documentary evidence concerning the applicant's spouse's claim of potential financial hardship in the Dominican Republic. While it is likely that the applicant's spouse may experience some difficulties upon relocation based upon his claims, we find that there is 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.

Addressing the hardships the applicant's spouse would experience if he remained in the United States without her, the applicant states that her spouse has a history of anger and alcohol issues; due to her relationship with her spouse, he no longer drinks or becomes violent; his relationship with his children has improved; and she is worried that he would revert to his prior behavior if she moved to the Dominican Republic. The applicant's spouse states that the applicant fits with his family perfectly; he loves the applicant; he previously had anger management issues and his prior marriages

did not work out; his attitude has become better due to their relationship; his relationship with his children has improved; and he is worried that he would revert to his prior behavior if she moved to the Dominican Republic. The applicant's spouse's children, family members and friends have made similar comments about the applicant's effect on her spouse. The record includes evidence of the applicant's spouse's criminal record, concerning incidents that occurred before they married in 2010.

The record reflects that the applicant's spouse may experience a degree of emotional difficulty without the applicant, due to her positive effect on him. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States.

The documentation in the record does not 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 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.