



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: **DEC 18 2012** Office: KENDALL, FL [REDACTED]

IN RE: [REDACTED]

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:

[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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director (“Field Office Director”), Kendall, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation.

The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Acting Field Office Director*, dated April 13, 2011.¹

On appeal, the applicant asserts that his spouse would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility.

The record contains, but is not limited to, letters from counsel, statements from the applicant and the applicant’s spouse, financial records, as well as various immigration applications and decisions. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

In the present case, the record reflects that the applicant attempted to enter the United States using a photo-substituted passport in the name of [REDACTED]. At that time, applicant stated under oath that he paid a sum of money for the passport and was aware it was not obtained validly. The applicant was given an opportunity to withdraw his application for

¹ The record also indicates that the applicant previously filed a Form I-601 Application for Waiver of Grounds of Inadmissibility which was denied on September 20, 2007 for failure to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. An appeal was then dismissed by the AAO on November 2, 2007.

admission and on or about March 6, 1994 he returned to Peru. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the AAO concurs in the applicant's inadmissibility under 212(a)(6)(C)(i) of the Act, and the applicant does not contest his inadmissibility on appeal.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and the USCIS 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).

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.

The applicant’s spouse indicates that the applicant is her source of emotional support. The applicant’s spouse also stated that she would be unable to return to Peru because there is no security or economic stability. The applicant’s spouse further indicated that if she were to live in Peru she would be unable to find employment because it is extremely difficult for individuals once they have arrived at a mature age to work in that country. She also stated that the applicant is undergoing the same difficulty in finding employment due to advancing age. The applicant’s spouse further states that she would be unable to obtain medical insurance in that country in the same way she is able to receive coverage in the United States.

The applicant indicates that it is impossible for him to obtain comparable employment in Peru due to his advancing age and the limitations on the minimum wage in that country in order to care for his family similarly to the standards he provided in the United States. He also states that he would not want his wife to relocate to Peru because she deserves a better life and that it will be difficult for his spouse to visit due to the expense.

Counsel asserts that the marriage of the applicant and his spouse would be irretrievably broken if the applicant is prohibited from residing in the United States.

Although the applicant’s spouse indicates she is under strain because she is living apart from the applicant, the applicant has not submitted sufficient evidence or explanation to distinguish his spouse’s challenges from the common consequences of the inadmissibility of a spouse. In addition, while the applicant’s spouse also made general statements regarding an inability to gain

employment or medical coverage in Peru, there was insufficient evidence submitted with which to gauge the possible impact of these issues on the qualifying relative. While the applicant did submit some generalized information regarding the minimum wage standards and unemployment rates in Peru²; there was no evidence submitted to demonstrate that the qualifying relative would be directly impacted by this data if the decision to relocate were made. Moreover, the applicant has not provided evidence to indicate any serious medical conditions exist which would require continuous or imminent care for his spouse. Accordingly, he has not established that his spouse would lack required medical care in Peru.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 United States citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. 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(a)(9)(B)(v) and 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.

² The Wall Street Journal noted online in December of 2010 that Peru's cabinet approved an increase in the monthly minimum wage to 600 soles (\$215.05) from the current PEN550.00, <http://online.wsj.com/article/BT-CO-20101110-714202.html>; U.S. Department of State indicated the unemployment rate for Lima(2009) to be 8.4% and underemployment for the same year to be 44.66%, <http://www.state.gov/r/pa/ei/bgn/35762.htm>.