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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: FEB 0 1 2012 Office: LIMA 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).

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Lima, Peru. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion to reopen will be granted, and the prior decisions will be affirmed. The waiver application is denied.

The record establishes that the applicant is a native and citizen of Peru who made material misrepresentations regarding her duties and employment history when she attempted to procure an L visa in 2004. The applicant was thus 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 attempted to procure a nonimmigrant visa by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States.

The officer in charge 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 Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 26, 2006.

On appeal, the AAO determined that the applicant had shown that her U.S. citizen husband would suffer extreme hardship were he to remain in the United States while the applicant resided abroad due to her inadmissibility. However, the AAO concluded that as the applicant had not established that her husband would experience extreme hardship should he relocate to Peru to reside with her due to her inadmissibility, the appeal was dismissed. *Decision of the AAO,* dated February 19, 2009.

On motion, counsel for the applicant submits the following *inter alia:* a brief, dated March 20, 2009; evidence of the applicant's spouse's enrollment at [redacted] Miami, Florida; documentation regarding country conditions in Peru; documentation establishing that the applicant and her spouse do not currently own real estate or businesses in Peru; and evidence that an attempt to kidnap the applicant occurred in 2001 in Lima, Peru. The entire record was reviewed and considered in rendering this decision.

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

> (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.

Section 212(i) of the Act provides that:

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

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.

As noted above, the AAO determined that extreme hardship had been established were the applicant's spouse to remain in the United States while the applicant resided abroad due to her inadmissibility. However, the AAO determined that the applicant had failed to establish that her husband would experience extreme hardship should he relocate to Peru to reside with the applicant. As the AAO noted,

> The applicant did not assert that her husband would experience extreme hardship should he relocate to Peru to join her. The applicant's husband is a native of Peru, thus it is assumed that he would not face the challenge of adapting to an unfamiliar language and culture should he return there. The applicant's husband has traveled to Peru on numerous occasions, and he did not report encountering any difficulties during his stays there. The applicant's husband explained that the applicant's parents own a business in Peru, which raises the question of whether he would have employment opportunities there. Should the applicant's husband join her in Peru, he would not be faced with family separation which has caused numerous emotional and physical symptoms. Accordingly, the applicant has not shown that denial of the present waiver application would compel her husband to remain separate from her....

Supra at 5.

On motion, counsel contends that the applicant's spouse would experience emotional, academic and financial hardship were he to relocate to Peru to reside with the applicant. To begin, counsel explains that the applicant's spouse has long-term ties to the United States, including his profession as a Chef/Cook, the presence of his U.S. citizen daughter, and his studies at Le [redacted] and a relocation abroad would cause him hardship. In addition, counsel references the problematic economic conditions in Peru and explains that the applicant's spouse will not be able to obtain gainful employment to maintain his standard of living in Peru. Finally, counsel explains that there was a kidnap attempt against the applicant while in Peru and thus, the applicant's spouse may be in danger were he to relocate to Peru. *Brief in Support of Motion,* dated March 20, 2009.

To begin, with respect to counsel's assertion that the applicant's spouse has extensive long-term ties to the United States, including gainful employment and a U.S. citizen daughter, no documentary evidence has been provided to support the assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of

proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO notes that the record indicates that the applicant's spouse was fired from his job in 2006 and thus, has no long-term employment ties. *See Letter from* [redacted] dated November 20, 2006. As for the referenced U.S. citizen daughter, no documentation has been provided establishing her existence, how much contact the applicant's spouse has with her at this time, and what hardships he would face were he to be separated from her due his wife's inadmissibility. Alternatively, it has not been established that his daughter would be unable to travel to Peru on a regular basis to visit him.

With respect to the applicant's spouse's enrollment with [redacted] no documentation has been provided establishing that a departure to Peru would cause him academic disruption. The AAO notes that counsel, in his brief from March 2009, states that the applicant's spouse was only one semester short of graduation. Moreover, with respect to the problematic economic conditions noted by counsel, no documentation has been provided establishing that the applicant's spouse specifically will be unable to obtain gainful employment in Peru, his native country. Finally, while the AAO is sympathetic to the fact that there was an attempted kidnapping of the applicant in Lima, Peru in 2001, no documentation has been provided by counsel establishing that said incident, which occurred more than 10 years ago, would result in hardship to the applicant's spouse. 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)).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 motion to reopen is granted and the prior decision of the AAO is affirmed. The waiver application is denied.

ORDER: The motion to reopen is granted, and the prior decisions affirmed. The waiver application is denied