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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 07 2013 OFFICE: WASHINGTON, D.C.

IN RE:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Bolivia who has resided in the United States since July 18, 1999, when she presented an Argentinian passport which did not belong to her to procure admission into the United States. She 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. The applicant is the spouse of a lawful permanent resident and is the derivative beneficiary of her spouse's immigrant petition. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her lawful permanent resident spouse and U.S. Citizen children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 23, 2009.

On appeal, counsel contends the applicant met her burden of proof to demonstrate her spouse will experience extreme financial, emotional, and family-related hardship upon separation. Counsel moreover asserts that relocating to Bolivia would necessitate giving up his permanent resident status, which would be in and of itself an extreme hardship.

The record includes, but is not limited to, statements from the applicant's spouse, letters from family and friends, financial documents, medical bills, evaluations from a licensed clinical social worker, an article on country conditions in Bolivia, website printouts on child care expenses, other applications and petitions, evidence of birth, marriage, residence, and citizenship, 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) 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:

> (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 in 1999 the applicant, a native of Bolivia, presented an Argentinian passport in the name of [redacted] to immigration officials to procure admission into the United States. Inadmissibility is not contested on appeal. The AAO therefore finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her lawful permanent resident spouse.

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. 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 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 v. I.N.S.*, 138 F.3d 1292 (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.

Counsel claims that without the applicant present, her spouse will have to raise and take care of two children while working full-time, which will also lead to financial hardship. The applicant's spouse explains he works as a drywall finisher, while the applicant maintains the house, takes care of the children's needs, puts warm compresses on the elder child's eyes for her eye condition, and cooks. He indicates that without the applicant present he will have to pay for child care for the children, which would be difficult due to his limited income. Documentation on child care costs are submitted on appeal. The spouse moreover states that he would also have to pay for house cleaning and some cooking, which would add to his financial hardship. He claims he would also have to carry the emotional burden of being both parents to the two children. A licensed clinical social worker indicates he has had multiple communications with the applicant's spouse, and the hardships associated with separation from the applicant include finding and paying for child care and domestic assistance, moving to less expensive housing, as well as providing for the spouse in Bolivia financially. The social worker indicates the spouse earns $40,560 a year. The social worker additionally confirms that the applicant applies compresses on the elder child's eyes four times a day to treat her chalazion, which will be difficult for the spouse to do given that he has a full-time job. A school / work excuse form was submitted indicating the child was seen in 2010 for a chalazion, which can recur frequently. The social worker moreover states that the spouse does not have health insurance, which resulted in a $3,000 bill when he went to the emergency room. He additionally reports that the spouse considered having his deviated septum operated on in Bolivia because of the reduced costs.

Counsel contends it took more than 10 years for the applicant's spouse to obtain his U.S. permanent resident status, and to lose that status by relocating to Bolivia would represent extreme hardship. The spouse indicates that he will not relocate to Bolivia, nor will he send his two children to Bolivia because he would suffer from emotional and psychological hardship without them.

Despite submission of evidence on child care and cleaning expenses, as well as documentation on the spouse's 2007 income, the record does not contain sufficient evidence of the spouse's household expenses or verification of his current income to support assertions that without the applicant present, the spouse would be unable to meet his financial obligations. Furthermore, although the applicant's spouse contends he would be unable to afford child care for both of his children, the record indicates they are old enough to attend school, and the record does not demonstrate that child care before and after school would be prohibitively expensive. The spouse's contentions that he would also have to send money to the applicant in Bolivia are also unsupported by evidence that she would be unable to meet her financial obligations in that country. Without sufficient details and supporting evidence, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

Counsel contends the spouse's forensic medical report from a specialist, which makes a reasonable prediction on future hardship, should be considered in an analysis of extreme hardship. The AAO notes that, while letters from a licensed clinical social worker may not necessarily constitute a forensic medical report, assertions contained within are considered as evidence in a determination of extreme hardship. However, with respect to the social worker's contentions on the hardships the spouse may suffer due to the elder child's eye condition, other documentation submitted on appeal from the child's treating physician does not demonstrate that the child has had recurring incidents, and an online printout submitted indicates the chalazion will often disappear without treatment in a month or so. Given these contradicting assertions and evidence on whether the spouse will need to provide continuing treatment to the child for this condition, the AAO is unable to determine the medical, family-related hardship the spouse will experience without the applicant present.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, including emotional and family-related difficulties, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Bolivia without her spouse.

Furthermore, the AAO notes that although the applicant's spouse is a lawful permanent resident of the United States, assertions on hardship he may experience upon relocation to Bolivia are viewed in light of the fact that he is a native and citizen of that country. Additionally, although counsel asserts that giving up his permanent residence in the United States itself constitutes extreme

hardship, that consequence of relocation is a common result of inadmissibility or removal for a lawful permanent resident family member of an inadmissible alien.

The AAO notes that relocation to Bolivia would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Bolivia.

Counsel correctly indicates that the applicant must establish eligibility for the waiver under section 212(i) of the Act by a preponderance of the evidence. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, however, 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 her lawful permanent resident spouse as required under section 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 a 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.