(b)(6)

**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

U.S. Citizenship and Immigration Services

DATE: MAY 0 6 2013 Office: WASHINGTON, DC File:

IN RE: Applicant:

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 Field Office Director, Washington, D. C., denied the waiver application, and it 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 procuring a visa and admission to the United States by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with his family.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* July 18, 2012.

On appeal, counsel contends that the field office director erred in concluding the applicant had not established that his inadmissibility would result in extreme hardship to his lawful permanent resident wife, and offers new evidence in support of this claim.

Counsel provides updated documentation of the emotional hardship claim consisting of a new psychological evaluation. The record also includes, but is not limited to: a hardship statement from the qualifying relative; the applicant's statement; an earlier psychological evaluation; birth, marriage and naturalization certificates; and copies of a passport, visa, and Form I-94. The entire record was reviewed and all relevant information considered in reaching this decision.

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

> 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)(1) of the Act provides:

> 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 [...].

The record indicates the applicant admitted on December 1, 2011 during his adjustment of status interview to having procured a fraudulent birth certificate from Peruvian authorities in order to obtain a passport reflecting the Japanese heritage required to obtain work in Japan, thereafter using this passport bearing a name and birthdate other than his own to procure a B1/B2 visa, and using these travel documents to enter the United States several times, most recently on March 11, 1999.

A waiver of inadmissibility under section 212(i) 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 or his children can be considered only insofar as it results in hardship to a qualifying relative. Immigration databases show that the applicant's wife is a lawful permanent resident and the only qualifying relative in this case. If extreme hardship is established, the applicant is statutorily eligible for a waiver, and 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 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.

Regarding hardship from relocation, the applicant contends that returning to her native Peru would impose extreme hardship on his wife, but provides no documentation of actual events recounted in his wife's statement or noted in her psychological evaluations (as she reported them to the psychologist). The record reflects that she is nearly 45 years old and claims to have first entered the United States in 2001, she has two children with the applicant, ages 18 and 25, who joined their parents here in 2003, and all four live together as a family unit. She claims to have experienced two nearly fatal bombings in 1990 or 1991 that make her fearful to return to Peru, but there is no evidence to substantiate these occurrences. There is likewise no documentary evidence that the applicant and his wife operate a home business as reported by the psychological evaluations, and the record contains nothing to show that they have earned income or reported it. Other than her children, the record reflects no significant ties of the applicant's wife to this country, while indicating that her father, sister, and father-in-law remain in Peru.

The evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to the country where she spent the first 33 years of her life and where her only other extended family members live. Country condition information indicates the Shining Path terrorist group remains active in Peru, but mentions only "sporadic incidents of Shining Path violence, mainly against Peruvian security services," in the recent past in rural provinces. *See U.S. Department of State, Peru – Country Specific Information*, March 28, 2013. The U.S. Department of State has no current travel warning for Peru, there is no indication that the applicant's spouse would be in any specific danger. The AAO further notes that the applicant's wife remained in Peru for over 10 years after the bombings she reports and, when she departed, left her children there for two more years. If she returns to Peru to avoid being separated from her husband due to his inadmissibility, the applicant's wife need not bring her adult or nearly-adult children along, and her most recent psychological evaluation reflects this realization. There is no indication that she could not continue to conduct in Peru the home-based business she claims to operate here, nor that her relatives there have been subjected to threats or violence since she left the country. While not insensitive that such a move would disrupt her life, the evidence does not establish that it represents a hardship that rises to the level of "extreme."

Regarding separation, the applicant's wife contends that thoughts of losing her husband have caused her emotional and financial hardship. Two psychologists diagnose her with depression, anxiety, and adjustment disorder -- based on questionnaires and interviews revealing symptoms including

difficulty concentrating, worry, and feelings of hopelessness, agitation, and confusion -- and attribute many of these problems to stress stemming from her husband's problematic immigration situation. *See Psychological Evaluations,* January 7, 2012 and August 12, 2012. Neither evaluation recommends a treatment other than allowing the applicant to remain here to avoid the need for his wife to choose between separation and accompanying him to Peru, nor notes any medical issues. There is no indication that the qualifying relative would be unable to travel to Peru to visit her husband in order to lessen the impact of separation.

The record contains few references to the applicant's or his wife's financial situation, and no documentation of the couple's income.[1] The January 2012 psychological evaluation notes that they are under no financial stress and have had steady income for many years, and while the August 2012 evaluation concludes that the family would have to live without half its income were the applicant to depart, there is no documentation to corroborate these statements. Further, the record contains no evidence of the couple's debts or living expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proving financial hardship 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)).

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. Her situation, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. Therefore, the applicant has not met his burden of establishing his wife would suffer hardship beyond the common results of removal or inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's U.S. resident spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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 met that burden and, accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

[1] The only documented income by a family member is the nearly $23,000 total income reported by the couple's elder child in 2010, and similar earnings in the preceding two years.