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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

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[REDACTED]

Date: **MAY 06 2011** Office: WASHINGTON, DC FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); and Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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 Field Office Director, Washington, DC Field Office, 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 Bolivia 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 admission to the United States through fraud or the willful misrepresentation of a material fact; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States; and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The record indicates that the applicant is the spouse of a United States citizen and the father of a United States citizen stepdaughter. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i); section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v); and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and stepdaughter.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 11, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application "because it 1) applies the wrong standard of while determining whether the qualifying relative's hardship would be extreme, 2) does not adequately evaluate factors pertaining to the qualifying relative's hardship in their aggregate and 3) some relevant factors asserted by counsel, i.e. conditions in the country to which applicant is set to return, are not discussed in the decision altogether." *Form I-290B*, filed August 6, 2008.

The record includes, but is not limited to, counsel's brief in support of the Form I-601, statements from the applicant and his wife, letters of support, medical documents for the applicant's wife, bankruptcy documents for the applicant's wife, pay stubs for the applicant, employment verification documents for the applicant and his wife, bank statements, a lease agreement, household and utility bills, insurance documents, documents pertaining to the applicant's arrests and convictions, and country condition documents on Bolivia. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) 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 immigrant 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...

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
 -
 - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
 -
- (v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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

(A) Conviction of certain crimes.—

- (i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime...

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

Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The [Secretary] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii)the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii)the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on March 17, 2002, the applicant entered the United States on a B-2 nonimmigrant visa. On October 1, 2004, the applicant departed the United States to Bolivia. While in Bolivia, the applicant obtained fraudulent entry stamps from a Bolivian "travel agency" to conceal his unlawful presence. On February 12, 2005, the applicant reentered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until August 11, 2005.

Based on the applicant's procurement of the fraudulent Bolivian entry stamps, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Additionally, the applicant accrued unlawful presence from September 17, 2002, the day after his authorization to remain in the United States expired, until October 1, 2004, the day he departed the United States. The applicant is seeking admission into the United States within ten years of his October 1, 2004 departure. The applicant is, therefore,

inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The AAO notes that counsel does not dispute these findings.

Additionally, the record shows that on December 9, 2003, the applicant was convicted of two counts of attempted theft, and was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act by the Field Office Director. The applicant has not disputed this finding on appeal. Because the applicant is also inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, and demonstrating eligibility for a waiver under sections 212(i) and 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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 stepdaughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. *See also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of

parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant’s spouse if she relocates to Bolivia. In a statement dated May 17, 2008, the applicant’s wife states she has “grave concerns about accompanying” the applicant to Bolivia. She states that should she “be separated from [her] loving family it would create great emotional distress and hardship to [her] and to [her] family.” The applicant’s wife claims that she would be unable to afford the plane tickets to return to the United States to visit her family. Additionally, she states her father has cancer and heart problems, and she “would be very concerned to be living so far away from [him].” In an undated statement, the applicant states his wife “would be unable to follow [him] to [Bolivia]. She does not speak Spanish and she would be unable to find employment in Bolivia.” The applicant’s wife states because she does not speak Spanish, she “would feel isolated and extremely lonely without [her] friends and family.” In an undated statement, the applicant’s wife states her daughter does not speak or understand Spanish, and she would have difficulty in school. The applicant states he is worried that his wife “will not be able to find quality medical care in [his] home country” as “the healthcare system in Bolivia continues to remain very poor.” The AAO notes that the record establishes that the applicant’s wife was diagnosed with insomnia, high blood pressure, hypothyroidism, anxiety/depression, and in 2007, she had a cyst removed from her right ovary. *See medical record*, dated June 19, 2007; *see also doctor’s prescription note*, dated July 23, 2008. In counsel’s undated brief in support of the Form I-601, counsel claims that

Bolivia has a reputation as "South America's most unstable republic." The AAO notes that counsel submitted a June 7, 2005 travel warning for Bolivia; however, this travel warning is outdated and currently there is no travel warning for Bolivia. Counsel claims that "requiring the applicant to return to his economically devastated and dangerous country would cause him and his USC [wife] extreme hardship. [The applicant] has made his home in the US and upon his permanent return to Bolivia he would be socially isolated, most likely unemployed and in severe depression from the inability to return to his spouse in the US." The AAO notes the claims made regarding the difficulties the applicant's wife would face in relocating to Bolivia.

The AAO acknowledges that the applicant's wife is a native and citizen of the United States and that she may experience some hardship in residing in Bolivia. Based on all of the factors in this case including the applicant's wife's lack of ties to Bolivia and her lack of Spanish language skills which will affect her ability to work and settle into Bolivian society, her separation from her family including her daughter and father who suffers from medical conditions, losing her employment in the United States, her medical and mental health issues, and lack of health insurance in Bolivia, the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in Bolivia.

However, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. Counsel claims that because of the applicant's wife's "fragile health," she "is likely to experience extreme hardship if [the applicant] were removed from the US." The applicant's wife states she has "multiple serious medical conditions for which [the applicant] has provided care and support." She claims that she has "had three ovarian surgeries, [she] suffer[s] from uncontrolled high blood pressure, and was recently diagnosed with hypothyroidism. Additionally, [she] [has] experienced many episodes of shortness of breath, severe palpitations and a recent fainting episode." As noted above, the record establishes that the applicant's wife was diagnosed with insomnia, high blood pressure, hypothyroidism, anxiety/depression, and in 2007, she had a cyst removed from her right ovary. The applicant's wife states she is currently "undergoing an extensive cardiac work-up at this time" and her "electrocardiogram and 24 hour holter [sic] [monitor] were reported as abnormal." The AAO notes that no medical documentation has been submitted establishing that the applicant's wife is undergoing any cardiac monitoring. The applicant states in "May of 2007, [his wife] had to undergo a surgery and have one of her ovaries removed. [His] wife's health has always been delicate even before the ovary was detected. She has had a recurring problem with her thyroid and she has continuously been suffering from high blood pressure." The AAO notes that no medical documentation was submitted establishing that the applicant's wife had her ovary removed. However, medical documentation in the record establishes that she had a cyst removed from her right ovary. The applicant's wife states her "medications and [her] health insurance [are] all based on [the applicant]." The AAO notes the medical concerns of the applicant's wife.

The applicant's wife states if the applicant returns to Bolivia, she would "lose [her] best friend and husband at the same time." Counsel states the applicant's wife's "anguish from her separation with [the applicant] would be significantly aggravated by the currently shaken state of her health." The applicant's wife states the applicant's immigration issues have caused her "extreme stress and anxiety." The applicant states his wife "has had trouble sleeping and has complained of high level of anxiety." The applicant states his wife was "prescribed antidepressant medication." The applicant's wife claims that her doctor indicated that her

“symptoms were indicative of anxiety attacks from great stress.” She also claims that she cannot concentrate at work. The AAO notes the applicant’s wife’s mental health issues.

As noted above, the applicant’s wife states her father has cancer and heart problems, so her parents are unable to help her when she needs “assistance following surgeries or any other medical needs. [She] [relies] totally on [the applicant] for transportation for the multiple emergency room visit and medical appointments.” The AAO notes that the record establishes that the applicant’s wife visited the emergency room eight times from January 26, 2005 to January 29, 2008. Counsel states the applicant “has assisted [his wife] in dealing with her father’s throat and prostate cancers and has inspired her to dream of a stable and prosperous family.” The applicant states he is worried that if he has “to return to Bolivia, [his wife] would be left all alone to cope with [his] absence and her medical problems.” The applicant’s wife states the applicant “has provided both enormous emotional and financial support and [she] truly [does] not know how [she] would survive without him.” The applicant’s wife states she is employed as a dental office manager and makes approximately \$42,000 annually. She claims that due to her bankruptcy she is unable to get credit to rent or buy a home. The AAO notes that the record establishes that the applicant’s wife filed for bankruptcy which was discharged on January 23, 2006. The applicant’s wife states that she would be unable to “afford to live by [herself].” Additionally, she claims that she has a daughter, whom her father is caring for, but she plans to have her move back home. The AAO notes the applicant’s wife’s concerns.

The AAO finds the record to include some documentation of the applicant’s and his wife’s income and expenses; however, this material offers insufficient proof that the applicant’s wife will be unable to support herself in the applicant’s absence. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See 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 notes that financial documentation in the record establishes that the applicant’s wife will encounter some economic challenges upon the applicant’s departure. However, the applicant has not distinguished his wife’s financial challenges from those commonly experienced when a spouse remains in the United States alone. Additionally, the record does not establish that the applicant’s wife cannot obtain health insurance without the applicant. Further, the submitted evidence does not establish that the applicant would be unable to obtain employment in Bolivia and, thereby, financially assist his wife from outside the United States. The AAO also finds that the applicant has not distinguished his wife’s emotional hardship due to family separation from that which is commonly experienced when spouses reside apart as a result of inadmissibility. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.