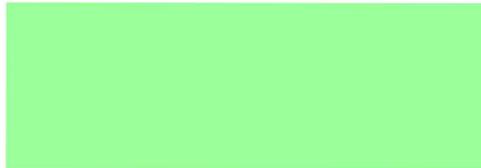


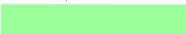
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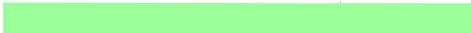


U.S. Citizenship
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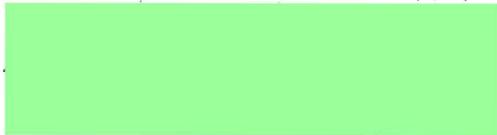
DATE: **JAN 10 2013** Office: LIMA, PERU

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IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h), (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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Lima, Peru and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained

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 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 record also supports that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act in order to reside in the United States with his United States citizen spouse and children.

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 Field Office Director*, dated October 24, 2011.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility. *See Form I-290B Notice of Appeal or Motion*, dated November 8, 2011.

The record includes, but is not limited to, the applicant's statements, the applicant's spouse's statements, family statements, medical reports, and various immigration application forms. 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.

In the present case, the record reflects that in March of 1998 the applicant presented a permanent resident card and social security card which were determined to be unlawfully obtained while seeking admission. The applicant was placed into Expedited Removal proceedings and removed from the United States in the same year. The applicant had previously resided in the United States in an unlawful status prior to this attempted reentry. The applicant then re-entered the United States without inspection after this removal and was later arrested for driving while intoxicated and possession of a controlled substance. The applicant pleaded guilty to these charges and was again removed from the United States on January 6, 2001. The applicant was also presumed to be in unlawful status for a period of more than one year at the time of his second removal. Based upon 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), for having sought admission to the United States through willful misrepresentation of a material fact. The record supports this

finding, the applicant does not contest inadmissibility, and the AAO concurs in the applicant's inadmissibility under 212(a)(6)(C)(i) of the Act.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

(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 —

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

The record also supports that the applicant was convicted of possession of a small quantity of marijuana in Arkansas for his conduct on or about November 24, 2000. The applicant asserts that he was not actually convicted, but the record contains documentation that reflects that he pled guilty to the charge and a fine and costs were assessed on or about March 11, 2011. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The record shows by a preponderance of the evidence that the quantity of marijuana in question was under 30 grams, thus the applicant is eligible for consideration for a waiver under section 212(h) of the Act.

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.

It is noted that the applicant requires waivers of inadmissibility under sections 212(h) and 212(i) of the Act. While section 212(h) of the Act includes the applicant's children as qualifying relatives, section 212(i) does not. However, if the applicant establishes eligibility under section 212(i) of the Act, he has also established eligibility under section 212(h) of the Act. Therefore, we will first assess whether the applicant has met the requirements of section 212(i) of the Act.

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 under section 212(i) of the Act. 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. *Salcido-Salcido*, 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.

The applicant’s spouse indicates that she is suffering extreme financial and emotional hardship on account of the applicant’s inadmissibility to the United States. The applicant’s spouse further indicates that since the applicant departed the United States she has had to rely on her mother and siblings for financial assistance. The applicant’s spouse also indicates that she cannot support their family alone, and the applicant has been unable to offer any significant financial maintenance because he does not have steady employment in Peru. *See Statement from Milagro Castillo*. The applicant’s spouse also states that she would be unable to live in Peru with the applicant because of the difficulty in finding lucrative employment. The applicant’s spouse further indicates that their younger children would be unable to receive the same educational benefits if she were to move them to Peru in order to reside with the applicant. The applicant’s spouse also states that she is having a difficult time taking care of their children in the United States without the regular assistance of the applicant; and is under stress because one of their children requires a special education program due to emotional needs. The applicant has offered a Psychological Report from Dr. Marissel Rangel Silva, C.Ps.P, which indicates that the child should continue to strengthen bonds with her parents and start a learning therapy. *See Silva Report* dated June 8, 2011. The applicant’s spouse lastly indicates that she believes she would have difficulty practicing her religious faith as a Seventh Day Adventist in the area where her husband was born and is currently residing.

The applicant indicates that he would like to assist his family more but is unable to do so while they are living separately. The applicant further states that he is not financially stable in Peru

and therefore cannot provide support to his family at this time. The applicant further states that he feels remorse for committing the acts which caused his inadmissibility, but did so in order to maintain contact with his family.

The evidence presented in the instant case is sufficient to demonstrate that the qualifying spouse is undergoing extreme hardship due to the applicant's inadmissibility. The applicant offered detailed information about his daughter's special needs and established that they would be better fulfilled in the United States. The applicant's spouse has sought to meet the emotional and psychological needs of their daughter on her own since the applicant's departure from the United States. This has created a hardship which is beyond the common or ordinary difficulties faced by families during the inadmissibility period of an immediate relative. The applicant has also shown that the attempt to relocate his family to Peru was unsuccessful due to the many challenges faced when trying to acclimate his two youngest children into the educational system.

The applicant has also demonstrated that the financial challenges faced by his spouse in caring for the family alone through the years since the applicant's departure have been substantial. The applicant's spouse has been obliged to live with her mother since the applicant's departure in order to take care of her children's needs because she is unable to care for them alone. This situation has created particular stress on the spouse, since she must now rely on her own parent's income in order to care for her children.

In addition, the applicant's spouse became a member of a religion which continues to maintain a very small following in Peru according to the U.S. Department of State International Freedom Report. This limitation of Adventist congregants could possibly make it more difficult for her to remain active in the religious community. See *U.S. Department of State International Religious Freedom Report for 2011*. Moreover, while the applicant's spouse is free to practice a religion of her choice in the United States and raise their children as Seventh Day Adventists, the record suggests that living amongst the applicant's family in Peru, who remain members of the religious majority, may also pose particular child rearing challenges.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise above the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has established extreme hardship to his United States citizen spouse as required under sections 212(i) and 212(h) of the Act.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

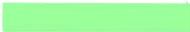
Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to remain in Peru, regardless of whether she relocated with the applicant or remained in the United States, the applicant's community and family ties in the United States, and the letters from community members that illustrate the important role that the applicant played in the life of his family in the United States. The unfavorable factors in this matter are the applicant's misrepresentation of material facts while seeking admission into the United States and his past criminal conviction for a minor drug offense for which he pled guilty.

The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the INA, 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. Accordingly, the appeal will be sustained.

(b)(6)



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ORDER: The appeal is sustained.