

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **JAN 15 2015** OFFICE: HIALEAH

FILE: [REDACTED]

IN RE: [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), section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Hialeah, Florida denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 immigration benefit by fraud or willful misrepresentation. The applicant was also found to be inadmissible pursuant to 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 10 years of his last departure from the United States, and section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law of a state relating to a controlled substance. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepdaughter.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation or relocation. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated July 18, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse would face emotional and financial hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse cannot relocate to Peru to reside with the applicant because she has never resided in Peru, does not speak Spanish, and would leave behind the safety, family members, education and employment she possesses in the United States. Counsel also contends that the applicant's spouse would be unable to bring her daughter with her upon relocation, as her daughter's custody is shared with her biological father.

In support of the waiver application and appeal, the applicant submitted identity documents, financial documentation, traffic violation and criminal records for the applicant, statements from the applicant's spouse and the applicant's stepdaughter's biological father, legal documents, documents from the applicant's stepdaughter's school, medical documentation, and background information concerning Peru and post-traumatic stress disorder.. The entire record was reviewed and considered in rendering this decision.

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

(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 Attorney General 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 Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant initially entered the United States pursuant to a B2 visitor visa on January 15, 1989, with authorization to remain in the United States until July 15, 1989. Subsequently, on July 13, 1989, the applicant changed his status to A2, as the dependent of an embassy employee, authorized to remain in the United States for duration of status. After the principal alien was no longer retained by the embassy, in November 1989, the applicant failed to maintain his status in the United States and an Order to Show Cause was issued against him on September 22, 1994. The applicant was ordered removed in absentia on April 23, 1997.

Counsel for the applicant contends that the applicant only departed from the United States on one occasion subsequent to his arrival in 1989, and prior to the applicant's second and final entry into the United States in 2001. Counsel asserts in a brief in support of the applicant's Form I-601 that the applicant departed the United States in 1996, then later, that the applicant departed in 1997. However, driving violation records for the applicant, specifically for driving with a suspended license, indicate the applicant's presence in the United States as late as June 3, 1998. The applicant also acknowledged in immigration proceedings, on March 24, 2011, that he had remained in the United States until 1998. As such, the applicant accrued over one year of unlawful presence in the United States, from April 1, 1997, the effective date of the unlawful presence provisions, until his departure from the United States. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on 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 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 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 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...

The record reflects that the applicant the applicant was placed into immigration proceedings and ordered removed in absentia on April 23, 1997. The record also reflects that the applicant was arrested for marijuana possession on October 16, 1996 and arrested for battery on July 13, 1997.

On June 21, 2001, the applicant signed and submitted a Form DS-156, Application for Nonimmigrant Visa, stating that he had never been arrested for any offense or crime. The applicant also stated that he had not been subject to deportation within the past five years. On April 23, 1997, when asked whether he had disclosed his deportation order on his nonimmigrant visa application, the applicant responded in the affirmative. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring an immigration benefit by fraud or willful misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.¹

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(II) a violation of (or a 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:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection

¹ It is noted that the Field Office Director, in the July 18, 2014 denial decision, listed additional evidence of the applicant's inadmissibility under section 212(a)(6)(C) of the Act, which has also not been disputed by the applicant on appeal.

(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 if –

(1) (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 is established to the satisfaction of the Attorney General [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

The record reflects that the applicant was convicted of marijuana possession, less than 20 grams, on July [REDACTED] in Circuit Court of the Eleventh Judicial Circuit, [REDACTED] County, Florida. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for violating the law of a state relating to a controlled substance.

A waiver 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.² Hardship to the applicant or his stepdaughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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).

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

² As these section waiver sections are more restrictive than a waiver under section 212(h), only sections 212(i) and 212(a)(9)(B)(v) will be considered in evaluating the applicant's claim.

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 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.

The record reflects that the applicant is a 38-year-old native and citizen of Peru. The applicant’s spouse is a 37-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepdaughter in [REDACTED], Florida.

Counsel for the applicant asserts that the applicant has been in a relationship with his spouse for over three years, and that she requires the emotional support of the applicant to provide for her family. Counsel further asserts that the applicant and his spouse must care for the applicant’s spouse’s mother, who recently underwent knee surgery, and her father, who is 70% disabled due to post-traumatic stress disorder.

The applicant's spouse asserts that she would suffer extremely without the applicant and that she and the applicant stop by her parents' home to keep an eye on them. The applicant's spouse contends that she does not know how her parents would manage without the applicant and herself.

The record contains a document from the Department of Veterans Affairs determining that the applicant's father suffers from post-traumatic stress disorder, with an assigned percentage of 70. The record does not contain medical documentation for the applicant's spouse's mother. The record does contain background documents concerning post-traumatic stress disorder, but does not contain medical records stating the extent to which the applicant's spouse's father requires any assistance. There is no indication that the applicant's spouse's mother has been unable to provide any necessary support to her husband; the applicant's spouse states that her father takes medication and attends counseling. Further, there is no indication that the applicant's spouse would be unable to continue to check up on her parents in their residence in the absence of the applicant.

The applicant's spouse asserts that even though her daughter's biological father shares custody with her, the applicant cares for her daughter as though she were his own. The record contains a letter from the applicant's spouse's daughter's biological father stating that his daughter stays with him after school during the week and two weekends a month. The applicant's spouse's daughter's biological father asserts that the applicant plays a huge factor in his daughter's life when he is not present. It is noted that the applicant's stepdaughter is not a qualifying relative in the context of this application so that any hardship she would suffer will be considered only insofar as it affects the applicant's spouse.

The applicant's spouse contends that though she is employed, her salary alone is insufficient to provide for her family. The applicant's spouse states that she is employed as a medical billing associate and receives approximately four hundred dollars a month for child support. The applicant's spouse also states that the applicant repairs cars at their home, as a mechanic. Counsel asserts that the applicant is the main financial provider for their family. The applicant's spouse contends that she would have to seek a second job and government assistance without the applicant's financial assistance.

The record contains tax records for the applicant and his spouse from 2013 indicating a business income of 9,255 dollars and wages of 28,991 dollars. The financial documents further indicate that business income derives from the applicant, as the owner of a mechanic business, and that the wages were earned solely by his spouse. There is no indication that the applicant is employed in any other position. As such, the financial record does not support the assertion that the applicant is the main financial provider in their household. The record also does not contain a monthly accounting of income and expenses for the household. It is further noted that the applicant and his spouse began their relationship three years ago and the applicant's spouse separated from her previous husband over ten years ago. There is no indication that the applicant's spouse was unable to financially support herself and her ten-year-old daughter prior to her relationship with the applicant. The record does not contain any information concerning whether the applicant's spouse worked a second job or sought government assistance during that

time period. 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)).

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse asserts that her entire tight-knit family resides in the United States. The applicant's spouse further asserts that due to the health problems faced by her elderly parents, she cannot leave her family members behind. The applicant's spouse contends that she has resided in the United States for her entire life, has never visited Peru, and is unable to speak Spanish. As noted, the record contains documentation indicating that the applicant's spouse's father suffers from post-traumatic stress disorder.

The applicant's spouse asserts that she shares custody of her minor daughter with her daughter's biological father and that she could not bring her daughter to Peru upon relocation. The record contains a final judgment for dissolution of marriage for the applicant's spouse and her previous spouse. The judgment states that the applicant's spouse and her previous husband share parental responsibility for their minor child and all major decisions regarding the child shall be made jointly by the parties. The applicant's spouse's daughter's biological father submitted a statement indicating that he cares for their daughter frequently, but that his medical disabilities prevent him from being able to care for his daughter full time.

The applicant's spouse asserts that she would be forced to leave behind her employment position in medical billing if she departed from the United States. The applicant's spouse contends that her career in this area would end upon relocation, as she has no ability to speak, read or write in Spanish and the medical system is very different and less developed in Peru. The applicant's spouse also asserts that she would fear for her safety if she relocated to Peru, due to the crime in Lima, the city of the applicant's previous residence. The record contains a 2014 United States Department of State report stating that crime is a constant problem in Lima and U.S. visitors are vulnerable, as they are perceived to be wealthier.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Peru.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by

severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) and 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.