

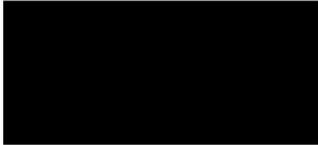
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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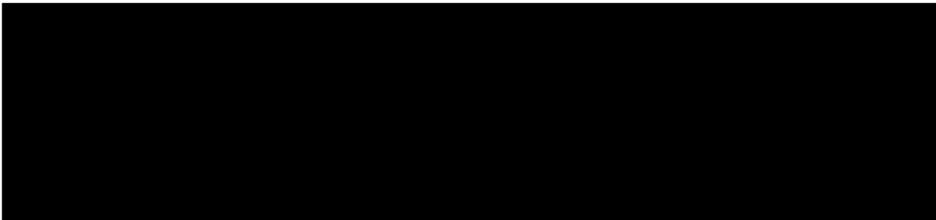
DATE: OCT 13 2011

OFFICE: LIMA, PERU

FILE: 

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)



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 Acting Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Chile who entered the United States pursuant to a CR1 visa on July 8, 1991. He 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 a fiancé of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to travel to the United States to marry his U.S. citizen fiancée.

The Acting Field Office Director concluded that the record failed to establish the existence of extreme hardship for the applicant's fiancée and denied the application accordingly. *See Decision of the Acting Field Office Director*, dated April 21, 2009.

On appeal, counsel for the applicant contends that the applicant's fiancée is suffering from extreme emotional hardship due to the absence of the applicant and that she also needs the applicant in the United States to relieve her economic burdens. Further, counsel asserts that the applicant's fiancée cannot relocate to Chile because her family is in the United States and she would be leaving behind those relationships, a long-term career, and property.

In support of the waiver application and appeal, the applicant submitted affidavits and letters of support, letters of correspondence, photographs of the applicant and his family, identity documents, bills and financial documentation, background information and report on conditions in Chile, certificates, and evidence of travel. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act, provides:

(C) Misrepresentation

- (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.

Section 212(i) of the Act, provides:

(i) Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The Form I-601 instructions note that a section 212(i) waiver may be approved if it can be established that a qualifying U.S. citizen or legal permanent resident relative (spouse, parent) or the K visa petitioner would experience extreme hardship if the applicant is denied admission. The instructions further note that if the applicant is a fiancé of a U.S. citizen, USCIS will conditionally approve the waiver application if it is determined that the applicant will be eligible for the waiver from inadmissibility once the applicant has celebrated a bona fide marriage to the U.S. citizen who filed the K visa petition.

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 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).

In the present case, the record reflects that the applicant applied for and received a CR1 visa based upon his marriage to his former U.S. citizen spouse. In the visa application, the applicant stated that he had only been married once, to his former U.S. citizen spouse. It was later discovered that the applicant had been previously married in Chile, on March 5, 1979. That marriage had not been dissolved prior to his marriage to a U.S. citizen on December 6, 1988. The applicant is therefore 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 is his U.S. citizen fiancée, who is also the applicant's former wife.

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*, 138 F.3d at 1293 (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 qualifying relative in this case is his U.S. citizen fiancée. The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's fiancée is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the

applicant's children will not be separately considered, except as it may affect the applicant's fiancée.

The applicant is a fifty-four year-old native and citizen of Chile and the applicant's fiancée is a fifty-five year-old native of Honduras and citizen of the United States. *See Form I-130, dated January 30, 1989.* The applicant and his fiancée were previously married to each other from December 1988 to November 1999 and they have two children together. The applicant is currently residing in Chile and the applicant's fiancée is residing with their two children in [REDACTED]. *See Affidavit of [REDACTED].*

Counsel for the applicant asserts that the applicant's fiancée is suffering from extreme emotional hardship because they are living in separate countries. Counsel further asserts that the applicant's children need their father present to guide their development and behavior. As noted above, the applicant's children are not qualifying relatives in the context of this application and any hardship they suffer will only be considered insofar as it affects the applicant's fiancée. It is further noted that the applicant has two children in the United States; his daughter is twenty years old and his son is twenty-one years old. *See Birth Certificate of [REDACTED]; Birth Certificate of [REDACTED].* The applicant's fiancée states that she sent their son to live with the applicant in Chile when he was a sophomore, because of teenage rebelliousness. *See Affidavit of [REDACTED].* According to the applicant's fiancée, their son overcame his problems and changed his behavior because of that trip. *Id.* There is no indication that either of their children presently suffer from any behavioral or developmental problems and their mother acknowledges that they are now young adults. *Id.*

The applicant's fiancée asserts that her inability to reunite with the applicant in the United States has been depressing. *See Affidavit of [REDACTED].* She states that she travels to see the applicant whenever possible, but is terrified that they will never be reunited as a family. *Id.* It is acknowledged that separation from a family member nearly always creates a level of hardship for both parties. However, there is no indication that the applicant's fiancée has been unable to work and function in her daily life as a result of her emotional hardship. In fact, the applicant's fiancée continues to own and run a business providing foster care to elderly adults. There is not sufficient evidence in the record to find that the applicant's fiancée suffers a level of emotional hardship in the applicant's absence that goes beyond the common consequences of inadmissibility or removal.

Counsel for the applicant asserts that the applicant's fiancée is suffering from extreme financial hardship and that she needs the applicant in the United States to alleviate her financial burden. Counsel further asserts that the applicant's fiancée is currently \$286,000 in debt, which includes her mortgages, her credit card debt, and her son's student loans. The applicant's fiancée also claims that she has gone into debt due to her visits with the applicant in Honduras and Chile. *See Affidavit of [REDACTED].* Counsel submitted financial documentation concerning the applicant's fiancée, including mortgage and loan statements and credit card bills. There is no indication that the applicant's fiancée is past due on any payments or otherwise unable to meet her monthly financial obligations. The record is insufficient to find that the applicant's fiancée is suffering from extreme financial hardship in the applicant's absence. Further, the courts considering the

impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's fiancée states that she cannot relocate to Chile because she would have to leave behind her closely-knit family, including her parents, six siblings, four nieces and nephews, and six aunts and uncles. *See Affidavit of* [REDACTED]. She explains that she currently lives with her two children, but they could not join her in Chile because they are unfamiliar with the culture and the language barrier would limit their educational opportunities. *Id.* The applicant's fiancée asserts that relocating to Chile would mean splitting up her family. *Id.* She claims that it would be an emotional hardship for her to leave her children and other family members behind in the United States. *Id.*

The applicant's fiancée was born in Honduras and naturalized as a U.S. citizen on July 15, 1980. *See Form I-130, dated January 30, 1989.* In addition, the applicant's fiancée is a long-term resident of the United States who has been living in this country since the age of twelve. *See Affidavit of* [REDACTED]. The applicant's fiancée notes that she owns her own home in the United States. *Id.* The record contains mortgage loan statements addressed to the applicant's fiancée for her property of residence. Further, the applicant's fiancée is a trained social worker who has owned and operated her own adult foster care business since 1994. *Id.* Certificates confirming the applicant's fiancée's social work degree, foster home license, and adult foster care training have been provided. Counsel asserts that if the applicant's fiancée relocated to Chile, she would be forced to leave behind her home, her profession, and the country where she resided for forty-one years. Based upon these factors, in addition to evidence of the applicant's fiancée's familial ties in the United States, it has been established that the applicant's fiancée would experience extreme hardship if she relocated to Chile.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen fiancée as required under section 212(a)(9)(B)(v) of the Act. The applicant has not established extreme hardship to a qualifying family member.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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).

Further, this applicant, as a matter of discretion, does not merit a grant of this waiver. The negative discretionary factors against this applicant include the nature of his admission to the United States on July 9, 1989. The applicant was admitted pursuant to a CR1 visa, as the spouse of a U.S. citizen, based on a marriage to [REDACTED] that took place on [REDACTED]. However, the applicant could not legally marry [REDACTED] on this date, as he was already married to another woman. The applicant had married [REDACTED] in Chile in 1979 and fathered two children in that relationship. The applicant’s first marriage was not dissolved at the time he entered into his second marriage.

In addition, on June 26, 1989, the applicant misrepresented his marriage status on his immigrant visa application by stating that he had been only been married one time, to his U.S. citizen spouse. The applicant was admitted to the United States based upon that misrepresentation. The applicant then persisted in misrepresenting his marriage status in the immigration forms he completed and submitted. The applicant, on his Form G-325, Form N-400, and Cancellation of Removal Application submitted to the court, continued to represent that he had only been married one time, to his U.S. citizen spouse.

It is noted that the applicant’s prior U.S. citizen spouse, now fiancée, gave a sworn statement to a special agent of the Immigration and Naturalization Service on March 9, 1999. According to the statement, she confronted the applicant in 1991 after discovering that he was already married to another woman. The applicant then threatened her, saying that if she told anyone, especially the INS, he would harm her and take their son away.

The applicant was convicted of Harassment against his U.S. citizen spouse on [REDACTED] pursuant to section 166.065 of the [REDACTED] Penal Code. According to the indictment filed on January 16, 1997, the applicant intentionally harassed and annoyed his victim by subjecting her to offensive physical contact. According to the applicant’s fiancée’s sworn statement, the applicant slapped her when she asked him to smoke outside their home. The applicant was placed in removal proceedings based upon this conviction on August 26, 1998. The applicant was removed from the United States to Chile on April 20, 1999. The applicant finally obtained an annulment for his first marriage on September 20, 1999 and a divorce for his prior marriage to his current fiancée on November 29, 1999.

The applicant asserts that he did not willfully misrepresent any facts in order to gain immigration benefits. He claims that he believed his marriage to [REDACTED] to be invalid because they were married in [REDACTED] but did not reside in that city. According to the

applicant, in Chile, couples must marry in their areas of residence. Despite submitting country and economic conditions concerning Chile, the applicant did not submit any documentation or Chilean statutes supporting his belief that his first marriage was invalid. The applicant states that he did not list his first marriage on the immigration forms he submitted because he believed that it would be inaccurate. However, in light of the fact that the applicant threatened his U.S. spouse with harm if she exposed his first marriage to INS, it is not plausible that the applicant's error was innocent or inadvertent. In fact, the applicant's unwillingness to accept responsibility for his willful misrepresentation, the very basis of this waiver application, evidences his lack of rehabilitation in this matter.

The favorable discretionary factors for this applicant are the applicant's fiancée and two children who reside in the United States and the letters they submitted on his behalf, the extreme hardship his fiancée would face if she were to relocate to Chile, letters of support submitted from the applicant's fiancée's family members, evidence that the applicant volunteered in Chile, and the fact that twelve years have elapsed since the applicant's removal from the United States

The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. In addition, the applicant has not demonstrated sufficient evidence of reformation or rehabilitation. As such, the AAO finds that the applicant has not established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is not warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.