



U.S. Citizenship
and Immigration
Services



H5

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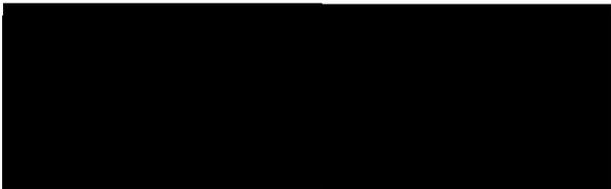


IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ronald Rosenberg

Acting Chief, Administrative Appeals Office

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 dismissed.

The applicant is a native and citizen of Bolivia who 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 sought to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated July 11, 2011.

On appeal, counsel asserts that the director erred in denying the applicant's waiver application, because the director failed to adequately evaluate the hardship factors in the aggregate. *See Counsel's Brief*, dated August 5, 2011.

The evidence of record includes, but is not limited to: statements from the applicant's counsel and spouse, letters from friends, a psychological evaluation and medical documents of the applicant's spouse, identification and relationship documents, financial documents, family photographs, and documents in Spanish.

8 C.F.R. § 103.2(b) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching 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.

The record indicates that the applicant initially entered the United States in 1992 in an unknown immigration status and remained for seven years. The applicant returned to the United States with a

B2 non-immigrant visa on April 17, 2000 that authorized him to stay for six months. The applicant remained in the United States until July 2001. On August 15, 2001, the applicant attempted to enter the United States by presenting a passport that contained a fake Bolivian entry stamp showing he was admitted into Bolivia on May 5, 2000. Upon further inquiry the applicant stated that he purchased the stamp to conceal his overstay period. The applicant was expeditiously removed to Bolivia the same day. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for having sought to procure admission to the United States through fraud or misrepresentation.¹ Counsel does not contest the applicant's inadmissibility.

Section 212(i) of the Act provides:

- (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.

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 an 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 instant case, the applicant's spouse is his qualifying relative.

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,

¹ The applicant is no longer inadmissible pursuant to sections 212(a)(9)(A) and 212(a)(9)(B)(II) of the Act, because the requisite bar periods have elapsed.

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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

Counsel states that the applicant's spouse cannot move to Bolivia because of her health problems. Medical evidence indicates that the applicant's spouse was treated for chest pain in May 2010 and had an abnormal electrocardiogram at the time. Evidence further indicates that she takes medication for hypertension and insomnia and has a history of gastroesophageal reflux disorder.

In his November 2006 psychological evaluation of the applicant's spouse, [REDACTED] a licensed psychologist, states that the applicant's spouse has been "somewhat depressed" and "highly anxious" since the applicant's return to Bolivia. According to [REDACTED] the applicant's spouse is vulnerable to becoming depressed again, because "much of her life has been filled with depression." [REDACTED] recommends psychotherapy for the applicant's spouse, given her history of abuse, and a consultation with a psychiatrist for pharmaceutical options. Counsel on appeal posits that the applicant's spouse's uncontrolled hypertension supports "a conclusion that her depression symptoms have progressed and worsened." He adds that the applicant's spouse cannot afford an updated psychological evaluation because of her financial situation.

Counsel states that both the applicant and his spouse "suffered extremely" because of their separation; although the applicant's spouse has not traveled to Bolivia to visit the applicant recently, they have maintained telephonic contact. The record includes copies of calling cards. In her 2002 statement, the applicant's spouse states that she and the applicant talk "almost every day" and discuss their plans for the future. She has visited the applicant several times, three times with her son. She states that the applicant treats her "with respect and tenderness" that she did not receive from the fathers of her children. She states that the applicant is a "responsible man" and her children have accepted him as a father.

The applicant's stepson states that he attends college and his mother cleans houses to support both of them. The record indicates the applicant's spouse's annual income is \$28,820. The applicant's stepson is concerned about his mother's well-being and he wants applicant to be with his mother as she ages. Other letters from family and friends attest to the applicant's good character and the loving relationship the applicant and his spouse have.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse resulting from their separation. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, the AAO notes that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). Though counsel asserts that the applicant's spouse is in a "dire financial situation," the record lacks documentary evidence demonstrating the family's household income and expenses that would permit evaluating the hardship she may be experiencing. The applicant is silent about his employment in Bolivia and how his absence affects his spouse financially. We note that without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the applicant's spouse makes no financial hardship claims in her 2002 statement. Without supporting documents reflecting the family's total household income and expenses, the AAO is unable to determine whether the applicant's spouse experiences financial hardship resulting from their separation.

Regarding the applicant's spouse's medical and psychological condition, the record lacks evidence corroborating counsel's assertion that her uncontrolled hypertension is related to her depression. The AAO finds copies of prescriptions insufficient to demonstrate the type of hardship the applicant's spouse is experiencing resulting from their separation. Furthermore, medical evidence does not address her condition after the chest pain that she experienced in May 2010. Moreover, the record fails to explain how her medical condition affects her daily living and in what capacity she may need the applicant's assistance in her daily activities. Therefore, the AAO concludes that the evidence in the record, considered in the aggregate, does not establish that the hardships the applicant's spouse experiences as a result of her separation from the applicant rise to the level of extreme.

The AAO finds that the applicant also has failed to demonstrate that his spouse would experience extreme hardship if she relocates to Bolivia. The AAO notes that although the applicant's spouse is not a native of Bolivia, she is from El Salvador and speaks Spanish. She has traveled to Bolivia many times since the applicant's return. The record lacks evidence demonstrating that the applicant and his spouse are unable to find employment in Bolivia. Moreover, the applicant has failed to submit evidence demonstrating that his spouse would be unable to receive adequate medical care in Bolivia. AAO recognizes that separation from her family in the United States would be emotionally difficult for the applicant's spouse; however, we note that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should she relocate, would not rise to the level of extreme.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is 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) 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.