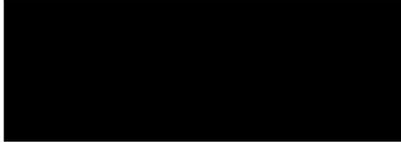


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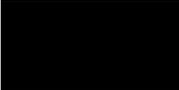


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



tl5

DATE: FEB 15 2012 OFFICE: PROVIDENCE, RHODE ISLAND

FILE: 

IN RE:

APPLICANT: 

APPLICATION:

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

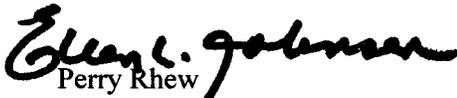
ON BEHALF OF APPLICANT:



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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Bolivia who has resided in the United States since November 6, 1999, when she was admitted into the United States pursuant to a B-1/B-2 non-immigrant visa. The applicant failed to disclose her residence without status in the United States from 1986 to 1996, as well as her two U.S. Citizen children and marriage at the non-immigrant visa interview. She 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 the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant had failed to prove the qualifying relative would experience extreme hardship given the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated May 25, 2010.

On appeal, counsel for the applicant submits a brief in support of appeal. Therein, counsel concedes the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, but asserts that the Field Office Director erred in describing the misrepresentation. *Brief in support of appeal*, received June 18, 2010. Counsel then explains the financial, medical, psychological and emotional hardship the applicant's spouse currently experiences and would continue to experience given the applicant's inadmissibility. *Id.*

The record includes, but is not limited to, evidence of birth, marriage, residence, and citizenship, correspondence, affidavits from the applicant and her spouse, letters from the two U.S. Citizen children, letters from medical professionals, employers, and friends, financial documents, educational documentation, evidence of country conditions in Bolivia, other applications and petitions filed on behalf of the applicant, copies of U.S. Federal Income Tax returns and paystubs, and evidence of entry into the United States. 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.

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.

In the present case, the record reflects that at a 1999 consular interview for a non-immigrant visa the applicant failed to disclose her presence in the United States from 1986, when she entered without inspection, until she returned to Bolivia in 1996, as well as her marriage in the United States and her two U.S. Citizen children.¹ The applicant obtained the B-1/B-2 non-immigrant visa and was admitted to the United States on November 6, 1999. *See B-1/B-2 visa*, issued October 4, 1997, *see also I-94, Arrival / Departure Record*, November 6, 1999. 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 her U.S. Citizen spouse.

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).

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

¹ The Field Office Director erred in stating the applicant failed to disclose she was married to a U.S. Citizen, as her spouse became a U.S. Citizen in 2008, and was not a U.S. Citizen in 1999, when the disclosure occurred. The Field Office Director's statement that the applicant attempted to enter the United States with a photo-substituted passport under a false alias is also not supported by the record.

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 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 spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse explains he experiences severe financial hardship, as he was laid off from his job in July 2008. *Affidavit of applicant's spouse*, September 29, 2009. A letter from his former employer, [REDACTED], verifies that he was laid off in June 2008, adding that he was earning \$13.05 per hour, and that they cannot foresee a need to ask him to work again. *Letter from [REDACTED]* January 23, 2009. Letters from [REDACTED] confirm that his mortgage payments are past due, and that foreclosure is being considered. *Letters from [REDACTED]* September 11, 2009 and September 15, 2009. Before the applicant's spouse was laid off, U.S. Federal Income tax returns show the household's adjusted gross income was \$20,895 in 2007. *See Form 1040, U.S. Individual Income Tax Return, 2007*. Both the applicant and his spouse confirm he has not been able to find a job, and that they have been living off of unemployment benefits. *Affidavit of applicant*, September 30, 2009, *affidavit of applicant's spouse*, September 29, 2009. In support, the record contains a letter from the Department of Labor and Training, Rhode Island, informing the applicant's spouse that he is eligible for an additional 20 weeks of unemployment benefits, with a weekly benefit of \$365, and a maximum benefit amount of \$7300. *Letter from Department of Labor and Training*, January 3, 2009.

The applicant's spouse contends this financial hardship is exacerbated by his deteriorating health. He indicates he is taking six different medications every day, including Omeprazole, Gemfibrozil, Lisinopril, a vitamin, Lexapro, and Zolpidem. *Affidavit of applicant's spouse*, September 29, 2009. A letter from the spouse's physician confirms he is being treated for multiple conditions including hypertension, dyslipidemia, gastritis, and depression. *Letter from [REDACTED]* September 9, 2009. The applicant's spouse explains the applicant assists with his medical needs in that she prepares food for him according to his strict diet, makes sure he takes his medications, takes care of the household and performs many of the household chores. *Affidavit of applicant's spouse*, September 29, 2009. The spouse adds that the applicant helps him maintain a low-stress life, keeping him out of situations which could upset him. *Id.* A licensed social worker opines he is providing counseling services to the spouse, who has symptoms of major recurrent depressive disorder. *Letter from [REDACTED]* September 29, 2009.

Letters from the two adult children, now 22 and 20 years old, confirm the applicant's essential role in their close-knit family, as well as the degree to which the applicant's spouse needs the applicant for everyday assistance and emotional support. *Letter from [REDACTED]* September 23, 2009, *letter from [REDACTED]* September 22, 2009. They also indicate how much they would miss their mother, and Paola adds she would quit school and return home to help her father if the applicant had to return to Bolivia. *Id.*

Counsel for the applicant submits if the family relocated to Bolivia, the spouse's medical and psychological problems would be aggravated, he would be unable to find adequate employment there, and the children's education would be compromised, as they would be unable to continue their education either here or if they accompanied their parents to Bolivia. *Brief in support of appeal*, June 17, 2010. The applicant's spouse adds that Bolivia is a very poor and unsafe country, and he cannot imagine how the applicant will survive there without her family and home. *Affidavit of applicant's spouse*, September 29, 2009. A U.S. Agency for International

Development and U.S. Department of State report are submitted in support, as well as other articles on healthcare and poverty in Bolivia. *See articles and reports.*

The applicant has provided significant evidence of financial hardship. The record reflects the applicant's spouse has been unemployed since June 2008, and has been receiving unemployment benefits. *Letters from* [REDACTED] September 11, 2009 and September 15, 2009, *see also letter from* [REDACTED] January 23, 2009. Moreover, even when the spouse was employed the household's 2007 adjusted gross income was less than 100 percent of the poverty guidelines for a family of four. *See Form 1040, U.S. Individual Income Tax Return, 2007, Form I-864P, Poverty Guidelines*, March 1, 2011. Although the record does not support assertions that the children would not be able to pay for college without their parent's financial assistance,² and it is unclear whether the applicant herself could alleviate this financial hardship by finding a job in the United States or in Bolivia, the AAO finds as a whole the evidence shows the applicant's spouse is experiencing significant financial difficulties.

The record also reflects the applicant's spouse has some medical and psychological issues which require treatment, as well as assistance from the applicant. The applicant's spouse has provided evidence that he has hypertension, dyslipidemia, gastritis, and depression, and states that he is taking numerous medications for these conditions. *Letter from* [REDACTED] September 9, 2009. Furthermore, although the applicant's assistance due to these conditions is not set forth in the letter from the spouse's physician, this assistance is described in the applicant's affidavit, the spouse's affidavit, and alluded to in [REDACTED] letters. *Affidavit of applicant*, September 30, 2009, *affidavit of applicant's spouse*, September 29, 2009, *letter from* [REDACTED] September 23, 2009, *letter from* [REDACTED] September 22, 2009. Though the spouse's psychological condition in and of itself does not constitute hardship above and beyond that which is normally experienced by relatives of inadmissible aliens, when considered cumulatively with his medical conditions, the assistance required from the applicant, and the spouse's financial hardship, the AAO finds there is sufficient evidence of extreme hardship to the applicant's spouse upon separation from the applicant.

There is also evidence of hardship to the applicant's spouse upon relocation to Bolivia. The spouse has medical conditions which are currently being treated in the United States, as discussed *supra*. The applicant submits an article on the poor health care system in Bolivia, and the AAO notes that the U.S. Department of State indicates in Bolivia medical care in large cities is adequate for most purposes, but facilities are generally not equipped to handle serious medical conditions. *Country specific information: Bolivia, U.S Department of State*, November 30, 2011. The record lacks evidence on whether the applicant's spouse would be unable to obtain adequate treatment for his specific conditions. Moreover, though the U.S. Department of State has not issued a current travel warning or advisory on Bolivia, it has indicated civil unrest, violence, and protests are frequent, even in otherwise peaceful times. *Country specific information: Bolivia, U.S*

² Financial aid documents indicate both children do not require substantial assistance from their parents for their education, and both children are attending schools located outside of Rhode Island, where the applicant and her spouse reside. *Connecticut College statement*, July 9, 2009, *Union College statement*, August 7, 2009.

Department of State, November 30, 2011. In that the record provides sufficient evidence to establish the financial, medical, emotional and other impacts of relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the spouse relocates to Bolivia with the applicant.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

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.

The unfavorable factors include the applicant's presence without status in the United States from her entry without inspection in June 1986 until her departure in 1996, as well as her misrepresentation at her non-immigrant visa interview. The favorable factors include the extreme hardship to the applicant's spouse, the lack of a criminal history, and evidence of good moral character as set forth in letters from family and friends.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

We note that the Field Office Director denied the Form I-485, application to adjust status, solely on the basis of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act and the Field Office Director's denial of the Form I-601 waiver application. *Decision of the Field Office Director*, dated May 25, 2010. The Field Office Director's denial of the Form I-485 was premature, as the applicant timely filed the instant appeal. Because the appeal will be sustained, there remains no basis, in the present record, for the denial of the adjustment application. Accordingly, the Field Office Director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and issue a new decision.

ORDER: The appeal is sustained.