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



U.S. Citizenship
and Immigration
Services

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Date:

Office: BALTIMORE, MARYLAND FILE:



JAN 16 2012

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.

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

Maria F. Rhew

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation on January 3, 1997. The applicant is the son of a Lawful Permanent Resident. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated April 24, 2009, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated April 24, 2009.

In her affidavit, the qualifying parent indicates that the applicant provides for her emotionally and physically. Further, she indicates that she would be unable to afford to pay for the assistance she receives from her son.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an affidavit from the qualifying parent, a copy of the qualifying parent's permanent resident card, medical letters and records regarding the qualifying parent, financial documentation regarding the applicant and his wife, and other materials submitted in conjunction with the Application to Adjust Status (Form I-485). No new evidence was provided 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, in pertinent part:

- (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 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 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.

A waiver of inadmissibility under section 212(i) of the Act is 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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 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 documentation submitted relating to the potential hardships facing the applicant's parent includes Form I-601, Form I-290B, an affidavit from the qualifying parent, medical letters and records regarding the qualifying parent, financial documentation regarding the applicant and his wife, and other materials submitted with Form I-485.

As previously stated, the qualifying parent asserts that the applicant provides for her emotionally and physically. Further, she indicates that she would be unable to afford to pay for the assistance she receives from her son.

The applicant must first establish that his United States citizen parent would suffer extreme hardship were she to remain in the United States while the applicant returned to Peru due to his inadmissibility. In her affidavit, the qualifying parent indicates that the applicant provides for her emotionally and that she has a history of mental illness, including having had "suicidal thoughts." To support these contentions, in addition to the qualifying parent's affidavit, the record contains two letters from medical professionals confirming that the qualifying parent was hospitalized for mental health issues in Peru in 1975, is currently taking medications for her mental issues, and has been diagnosed with generalized anxiety disorder, depression and insomnia. The applicant's mother also states that she has "no one else whom [she] can depend on." Further, the qualifying parent contends that the applicant provides for her physically and that she has medical problems. The applicant's mother does not specify how the applicant takes care of her, but she does indicate her other medical issues include fibrotic breast disease, diabetes and upper GI problems. The record contains medical records and a letter from her doctor. The doctor's letter indicates, "Breasts; Benign, compatible with fibrocystic disease." The letter also lists the applicant's mother as having "early diabetes mellitus, on diet alone" and "right upper abdominal distress, pending additional work up." The letter further states that the applicant's mother is "having a significant reactional anxiety and depression in view of her medical condition and she strongly needs the presence of her son to help her to go through." The letter contains no evidence regarding the financial situation of the qualifying parent to determine whether she would be unable to afford assistance from someone other than the applicant. The record only contains financial information regarding the applicant and his spouse's income such as tax returns and employer letters. Their tax returns do not list the qualifying parent as a dependant, nor does the record indicate that they live at the same address with the qualifying parent. Nonetheless, it

appears that the psychological and emotional issues that the qualifying parent would experience upon separation constitute extreme hardship.

However, extreme hardship to a qualifying relative must also be established in the event that she accompanies the applicant abroad based on the denial of the applicant's waiver request. The AAO finds that the applicant has not met his burden in showing that his mother would suffer extreme hardship if she relocated to Peru. There were no claims made regarding the inability of the qualifying parent to relocate to Peru. The record does not contain any documentation regarding country conditions in Peru. Even were the AAO to take notice of general conditions in Peru, the record lacks evidence demonstrating how the applicant's parent would be affected specifically by any adverse conditions there. Accordingly, the record does not show that relocation to Peru would cause extreme hardship to the applicant's parent. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66

Further, the record is silent regarding the nature and extent of the qualifying parent's current ties to the United States, aside from mentioning that she has no one to help her in the United States, and whether she or the applicant has any family or friends in Peru. There is also insufficient evidence that the applicant's parent has a significant medical condition that would be exacerbated or result in harm if she relocated to Peru. In her letter, the qualifying parent indicates that she has diabetes, upper GI problems and fibrotic breast disease. However, there was no other documentary evidence in the record to indicate whether relocation to Peru could pose significant issues for the qualifying parent. Further, while the applicant has established that his mother has mental health issues, the record makes no claims regarding the qualifying parent having issues with the availability of healthcare or mental health treatment in Peru.

In sum, although the record indicates that the applicant's mother may encounter hardships if she relocates to Peru, it does not support a finding that these difficulties, considered in the aggregate, would 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 qualifying relative, as required for a waiver of inadmissibility under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.