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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

PUBLIC COPY

#15



Date: **JAN 23 2012**

Office: HARLINGEN, TX

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

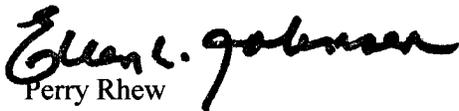


INSTRUCTIONS:

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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California. The Administrative Appeals Office (AAO) subsequently withdrew the decision of the field office director and remanded the matter to the field office director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. The Form I-130 petition has been approved, the field office director has issued a new decision denying the applicant's Form I-601 application, and has certified the decision to the AAO for review. The AAO affirms the decision of the field office director.

The record reflects that the applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to 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 reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated September 26, 2011.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on August 13, 2004; a letter from the applicant; an affidavit from ; a letter from the couple's child's physician and copies of medical records; a psychoeducational assessment; copies of taxes, bank statements, and other financial documents; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United

States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes, that when he previously visited the United States, he twice overstayed his visa but that he did not indicate his overstay in his visa application. *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated June 16, 2000. The record further shows that the applicant was removed from the United States on July 16, 2000, and that he reentered the United States on December 24, 2005, using an E-2 visa. Neither counsel nor the applicant contests the applicant's inadmissibility. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to procure an immigration benefit.

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.

In this case, the applicant’s wife, [REDACTED], states that she is dependent on her husband for physical, emotional, and family needs. She contends they have two children and that her husband is the foundation of their family. [REDACTED] states their children attend school, have many friends, and participate in many activities, things they would be unable to do anywhere else. She states she cannot uproot their lives. *Affidavit of [REDACTED]*, dated March 16, 2009.

Counsel contends the couple’s fifteen-year old son, [REDACTED] suffers from a growth hormone deficiency. *Brief in Support of Appeal*, dated August 10, 2009. A letter from a Pediatric Endocrinologist confirms that Mauricio was diagnosed with Growth Hormone Deficiency when he was fourteen years old and has received daily injections since June 2008. According to the physician, [REDACTED] needs close supervision when administering the injections. *Letter from [REDACTED]*, dated June 30, 2009.

Documentation from [REDACTED] school from when he was in second grade states that he is not ready for third grade. According to the school, he has severe learning disabilities in language and auditory processing and qualifies for special education. The documentation also shows that [REDACTED] often exhibits “trance like” behavior, warranting a neurological examination to rule out a seizure disorder. *Psychoeducational Assessment*, dated April 2002.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] will suffer extreme hardship if her husband’s waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the couple’s son’s hormone deficiency, there are insufficient details to show extreme hardship to [REDACTED] the only qualifying relative in this case. The letter from the physician does not specify how long [REDACTED] will

require treatment, whether there are any long term effects of [REDACTED] condition, or whether he can be adequately treated and monitored in Bolivia. Significantly, neither the applicant nor his wife discusses [REDACTED] medical condition and neither address whether it poses an extreme hardship on [REDACTED]. Similarly, although the record contains documentation regarding [REDACTED] learning disabilities, neither the applicant nor his wife discuss the issues addressed in the psychoeducational assessment. The AAO notes that [REDACTED] is currently seventeen years old and aside from his hormone deficiency, there is no information in the record addressing whether he continues to have any special needs. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. The AAO notes that although the record contains financial documents, the applicant does not make a financial hardship claim. In any event, the record shows that the applicant's wife owns significant assets. *Brief in Support of Appeal* at 3, dated August 10, 2009 (stating that Ms. Ulloa "is a real estate investor, having many personally owned properties"); *2007 Supplemental Income and Loss (Schedule E, Form 1040)* (indicating the applicant's wife owns eight rental properties and received a total of \$111,938 in rents during 2007).

Furthermore, there is insufficient evidence in the record to show that [REDACTED] would suffer extreme hardship if she returned to Bolivia, where she was born and where she married the applicant. Although the AAO recognizes that moving the family to Bolivia would uproot the children's lives, the record does not show that [REDACTED] hardship is extreme or unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). In addition, the record shows that the applicant's mother continues to live in Bolivia and that the "family possesses real estate property, mines and other valued property" in Bolivia. *Biographic Information form (Form G-325A)*, dated September 29, 2008; *Letter from [REDACTED]*, dated August 12, 2011. Therefore, considering all of the evidence in the aggregate, there is insufficient evidence to show that [REDACTED] would suffer extreme hardship if her husband's waiver application were denied.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant 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. *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 decision of the field office director is affirmed.