

(b)(6)

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**



[Redacted]

DATE: APR 30 2013 OFFICE: WASHINGTON, D.C. FILE: [Redacted]

IN RE: [Redacted]

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:

[Redacted]

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,
Ron Rosenberg

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington, D.C., and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Bolivia who has resided in the United States since July 18, 1999, when she presented an Argentinian passport which did not belong to her to procure admission into the United States. 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 lawful permanent resident and is the derivative beneficiary of her spouse's immigrant petition. She 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 lawful permanent resident spouse and U.S. Citizen children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 23, 2009. The AAO affirmed, finding the applicant did not meet her burden of proof in establishing that her spouse would experience extreme hardship in the scenarios of separation and relocation. *See AAO Decision*, January 7, 2013.

On motion, counsel contends the AAO erroneously relied on *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996), that the AAO failed to consider the full consequences to the spouse of giving up his permanent residence and relocating to Bolivia, that the AAO was incorrect in noting that the record did not contain evidence of the spouse's current income, and lastly, that the AAO incorrectly characterized counsel's statements in the letter submitted on appeal.

The record includes, but is not limited to, updated financial documents and previously submitted statements from the applicant's spouse, letters from family and friends, financial documents, medical bills, evaluations from a licensed clinical social worker, an article on country conditions in Bolivia, website printouts on child care expenses, other applications and petitions, evidence of birth, marriage, residence, and citizenship, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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 in 1999 the applicant, a native of Bolivia, presented an Argentinian passport in the name of [REDACTED] to immigration officials to procure admission into the United States. Inadmissibility is not contested on motion or on appeal. The AAO therefore finds the applicant is 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 for a waiver of this inadmissibility is her lawful permanent resident 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 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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.

Counsel contends the AAO erroneously relied on *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996) because *Matter of Mendez* involved a waiver under section 212(h)(1)(B) of the Act, not a waiver under section 212(i) of the Act, as in the applicant’s case. In its decision on appeal, the AAO cited to *Matter of Mendez* for the proposition that 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 *AAO decision*, January 7, 2013. Counsel claims that the waiver under section 212(i) of the Act requires nothing besides a demonstration of extreme hardship to a qualifying relative. This contention is not supported by statute or caselaw. The text of section 212(i) of the Act states that the Secretary “may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C)” (emphasis added). The statutory language indicates a favorable exercise of discretion is required in addition to a demonstration of extreme hardship. Furthermore, although counsel cites to *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) as support for the assertion that cross-application between standards for different types of relief is imprudent, counsel includes only a part of the language in that decision. In *Matter of*

Cervantes-Gonzalez, 22 I & N Dec. 560, 565 (BIA 1999), the BIA, assessing a section 212(i) waiver of inadmissibility case, wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, *we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion* [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

(emphasis added). The remainder of the sentence, not cited to by counsel, indicates that cross-application of factors involving different types of relief is helpful, given that they both require extreme hardship and a favorable exercise of discretion. Furthermore, the BIA states in *In Re Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, cancellation of removal case:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

In, *In Re Kao-Lin*, 23 I & N Dec. 45 (BIA 2001), a suspension of deportation case, the BIA referred to the factors listed in *Matter of Anderson*, *supra*, in making a determination of extreme hardship, stating in a footnote that:

The standard for "extreme hardship" that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his letter on motion, counsel additionally contends the AAO does not understand the proper role of an attorney in immigration proceedings because the decision on appeal notes that counsel

makes several arguments in the letter submitted on appeal. On appeal, as on motion, the AAO considers assertions made by counsel to be those of the applicant. While the AAO stated in its decision that counsel made assertions or contentions, the distinction was made to differentiate the source of the assertion, not to indicate that these statements were not those of the applicant or that they were given less weight.

Counsel further asserts that the AAO failed to give consideration to the full effects of relinquishing the spouse's lawful permanent residence by relocating to Bolivia. However, the applicant has not fully indicated what specific hardships her spouse would have to endure if he relocated. Moreover, the applicant has not provided sufficient evidence demonstrating that giving up his permanent resident status is per se extreme hardship, or that relinquishing it is somehow distinguishable from other permanent resident aliens who relocate. Without such evidence, the AAO cannot conclude the applicant has met her burden of proof in demonstrating her spouse would experience extreme hardship upon relocation to Bolivia.

With respect to finances, counsel contends that the income information was current when the appeal was filed. The appeal was filed in 2010¹, however, it did not contain any evidence related to income, and at the time of appeal, the record only contained U.S. federal income tax returns from 2007. Given the supplemented evidence on income provided on motion, the applicant has shown that her spouse would experience financial difficulties without her present. However, the record was not supplemented with evidence demonstrating that any medical, family-related, or emotional impacts of separation, when combined with the financial hardship, would rise above the hardships normally created when families separate due to inadmissibility. Without such evidence, the AAO cannot conclude that the applicant's spouse will experience extreme hardship without the applicant present.

In this case, the record still lacks 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse as required 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.

In proceedings for a 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, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.

¹ While the appeal was filed in January 2010, it was not received by the AAO until May 8, 2012.