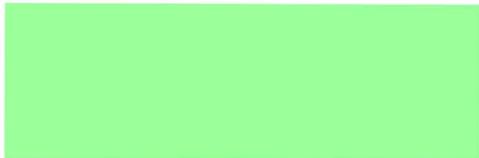


(b)(6)

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

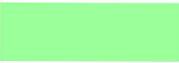


U.S. Citizenship
and Immigration
Services

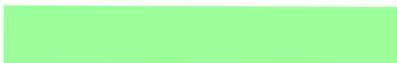


Date: **AUG 08 2013**

Office: NEWARK

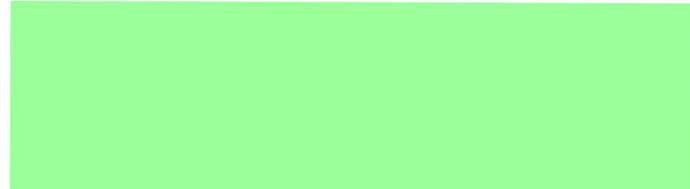
FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated September 20, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief, a police accident investigation report, a letter from a medical doctor about the applicant's daughter, and medical information from the [REDACTED]. The record also contains statements from the applicant and her spouse; a 2009 business license; country information for Peru; and information about depression. 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 that:

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.

The record reflects that when the applicant applied and received a B2 visitor visa to the United States in 2008 she indicated that she was married with her husband living in Peru when in fact they were divorced. The record also reflects that the applicant had married a United States citizen in December 2007, yet on the subsequent visa application indicated she was still married to her first

husband, failing to disclose she was in fact married to a U.S. citizen. The record further indicates that on the 2008 visa application the applicant indicated she had never violated her immigration status when in fact on her prior entry to the United States she had remained beyond her authorized stay. In addition, the record reflects that on November 6, 2008 the applicant was issued an order of expedited removal pursuant section 235(b)(1), but was released under an Order of Supervision due to medical problems.

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. The applicant's spouse 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-Moralez*, 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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 that the applicant’s spouse will experience extreme hardship because of the spouse’s medical condition and being forced to run a small business alone and because his U.S citizen daughter needs to be monitored due to a possible medical condition as a result of the applicant’s difficult pregnancy. Counsel asserts that the applicant’s spouse was a truck driver until an accident, but is now unemployed. Counsel asserts that the applicant runs an import/export business that the spouse is pivotal in managing which helps support the spouse and their child. Counsel asserts that the spouse cannot travel to Peru as he needs to remain in the United States to run the business and raise their daughter, who because of the applicant’s difficulty in pregnancy must be under medical observation due to possible long term effects.

The applicant’s spouse states that when he has been separated from the applicant it was torturous and that his life revolves around the applicant and their child. He states that he and the applicant are best friends and business partners as they own a woman’s boutique where the applicant is part of the success. The spouse states that he would not be able to earn the same income without the applicant’s contribution and the store could not function without her. He further states that staying in the United States is important because his entire extended family is here and that he has lived here since he was 20 years old. He states that their daughter needs her mother and that he cannot remain here supporting himself and the applicant in Peru while caring for their daughter, so he would have to go to Peru where he has no work history and no connections and does not read or write Spanish well. He states that if he had to relocate to Peru he would have to sell the business at a great financial loss. He also fears he could not provide for his family there.

The AAO finds that the record fails to establish that the applicant’s qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The record contains general information about depression, but no supporting evidence concerning the emotional

hardships the spouse states he would experience due to long-term separation from the applicant or how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel asserts that the applicant's spouse would be unable to leave his business to visit the applicant in Peru, but the record reflects he has made regular travels to Peru, thus it has not been established that he would be unable to visit the applicant there.

Counsel asserts the applicant's spouse would experience extreme hardship because of medical conditions, but submitted no documentation to support this assertion. The submitted police report shows an accident took place in November 2006 and the driver complained of elbow pain and feeling confused after being struck on the forehead, but no documentation was submitted to show any medical problems.

Counsel and the applicant's spouse assert the spouse's entire family is in the United States, but no documentary evidence has been provided to support the assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Counsel asserts the spouse will experience financial hardship as he and the applicant operate a business where counsel asserts the applicant is pivotal and that the spouse asserts could not function without her. The AAO notes that no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States the spouse will experience financial hardship. It is further noted that, other than a 2009 business license from the state of New Jersey for a thrift store, the record lacks details and supporting documentation of their business operations, including the roles the applicant and her spouse have in the business. The record does not demonstrate that the applicant's presence is necessary for the operation of the business or that her absence would adversely affect the business. Without this additional evidence of the family business operation, the AAO is unable to assess the nature and extent of the financial hardship, if any, the applicant's spouse would experience in the applicant's absence. Although the assertions have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.").

It has also not been established that the applicant would be unable to support herself while in Peru thereby ameliorating any hardships to the applicant's spouse that would result from maintaining two households. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination,

"[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's husband would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Peru to reside with the applicant due to her inadmissibility. Counsel and the applicant's spouse assert the spouse has no connections in Peru, his native country that he states he left at about the age of 20, and that he fears not being able to support his family. The record does not document this hardship. The record contains country information for Peru, but these reports describe generalized country conditions and the record does not indicate how they specifically affect the applicant's spouse. The submitted country conditions information fails to establish that the applicant's spouse would be unable to find employment and be able to support his family in Peru. There is no indication that he will be unable to obtain loans to operate a business, or find employment, or that he does not have transferable skills he could employ in Peru.

The record contains references to hardship the applicant's child 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 under section 212(i) of the Act. 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 record contains a letter from a physician that the applicant's daughter is monitored due the possibility of long term effects resulting from the mother's condition when the child was born, but there is no documentation that she has developed any health problems that would cause extreme hardship on the applicant's spouse were he to remain in the United States or if he were to relocate abroad to reside with the applicant.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.