



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **AUG 28 2013** OFFICE: NEWARK, NEW JERSEY [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:

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,

A handwritten signature in cursive script that reads "Michael Shumway".

f Ron Rosenberg  
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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is the spouse of a U.S. citizen and 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, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated January 20, 2012.

On appeal counsel submits additional evidence in support of the applicant's claim that if a waiver is not granted, his U.S. citizen spouse will experience extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received February 16, 2012.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; hardship affidavits from the applicant's spouse; affidavits from the applicant, the applicant's son's mother, and the applicant's spouse's daughter; an employer's letter; a landlord's letter; a single medical document; a single medical bill; payment receipts; income tax returns and wage statements; marriage, divorce and birth certificates and family photos; and copies of the applicant's spouse's parents' lawful permanent resident cards. The entire record was reviewed and considered in rendering this decision on the appeal.

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

- (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.

The record shows that the applicant attempted to enter the United States on July 14, 1995 by presenting a photo-substituted passport bearing the identity of another individual. The applicant was inspected by an immigration officer, admitted to presenting a false identification document, and withdrew his application for admission. The applicant subsequently entered the United States without inspection in or about 1999 and has not departed since. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility,

and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.

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 children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. 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 applicant’s spouse is a 46-year-old native of Peru and citizen of the United States who has been married to the applicant since December 2010. She asserts extreme hardship of an economic, physical and emotional nature. The applicant’s spouse states that she depends on the applicant’s economic support and he pays for everything in the house including rent, food and utilities. In a letter submitted on appeal, [REDACTED] contends that he is the applicant’s landlord and receives \$1,000 rent from him monthly. The record contains no corroborating evidence of [REDACTED] ownership, no lease demonstrating the occupancy term or amount, and no payment receipts. Nor has evidence been submitted showing that the applicant pays the household bills. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The applicant’s spouse maintains that the applicant supports their 25-year-old daughter, [REDACTED] and pays her full college tuition. In a letter submitted on appeal, [REDACTED] writes that the applicant provides financial support for all of her personal expenses and is “going to” contribute to her future education. No objective corroborating evidence has been submitted such as tuition receipts and/or receipts for other payments indicating the amount of support regularly provided [REDACTED] by the applicant. The applicant’s spouse avers that she cannot survive on her income alone because her work as a hair stylist has caused her to suffer pain and deterioration in her hands and a tumor, which she admits she has never brought to a physician’s attention. The record contains no corroborating medical documentation demonstrating the degree, if any, to which the applicant’s spouse is disabled or indicating that she is unable to work full-time as a result of any injury to her hands. A single medical document has been submitted on appeal, in which [REDACTED] DO writes that the applicant’s spouse was seen in his office on January 30, 2012 due to a fall approximately one year ago for which she was treated with Meloxicam. The letter does not

provide a diagnosis or prognosis and does not address the applicant's spouse's overall physical condition or indicate any other diagnoses, prognoses, or limitations of any kind. A letter from her employer notes that the applicant's spouse works part time "for physical and medical reasons," but provides no other details. There is no objective documentary evidence in the record from which an accurate assessment might be made concerning whether the applicant's spouse has physical limitations preventing her from supporting herself in the applicant's absence. It is noted that the applicant's spouse was married to her prior husband, [REDACTED] until May 2010, and then married the applicant on December 18, 2010. Both the applicant's and his spouse's Forms G-325A, Biographic Information, indicate that they did not reside at the same address until December 2010. And while tax and wage documents for 2010 show that the applicant earned \$14,500 more than his spouse during a year in which they were married for 14 days, the evidence is insufficient to show that the applicant's spouse cannot meet her financial obligations in the applicant's absence.

The applicant's spouse indicates that the applicant also supports her parents in Peru, and his 6-year-old son, [REDACTED] from a prior relationship. On appeal she explains that her parents are both U.S. lawful permanent residents who reside with her and the applicant but return to Peru each winter because extreme cold adversely affects her mother's osteoporosis. Copies of her parents' lawful permanent resident cards have been submitted on appeal, but no documentary evidence of economic support. A letter from [REDACTED], has been submitted in which she writes that the applicant pays child support in the amount of \$125 bi-weekly. She indicates that this is by "mutual agreement." The record contains no evidence of court-ordered child support payments or any written agreement between the parties. Copies of sequential receipts have been submitted on appeal showing bi-weekly payments to [REDACTED] of \$100 from October 2009 to April 2010 with the notation "[REDACTED]". The discrepancy between the \$100 and \$125 figures has not been addressed. [REDACTED] writes that [REDACTED] is very close to his father, who visits him every other weekend. The applicant's spouse states that [REDACTED] comes to their house every weekend, the applicant spends every moment he can with him, and [REDACTED] would suffer severely if his father is removed. The evidence does not show that the applicant would be unable to continue supporting his son from Peru or that any challenges faced by the applicant's son would constitute extreme hardship to the applicant's spouse. The applicant's spouse writes that she loves the applicant very much and would be lost without him and all the help he provides. While not insignificant, the challenges described have not been distinguished by those ordinarily associated with a loved one's inadmissibility or removal.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that she has resided in the United States since 2000 and cannot see herself living in Peru separated from her daughter and stepson. She explains that 25-year-old [REDACTED] is looking forward to continuing college and becoming a nurse, and as her only daughter, needs her mother to provide the emotional and physical support she needs. No

documentary evidence has been submitted to indicate that [REDACTED] has special needs requiring emotional or physical support that only the applicant's spouse can provide. The record contains no other assertions of relocation-related hardship to the applicant's spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including readjusting to a country in which she has not resided for 13 years; her family ties to the United States including her adult daughter, her minor stepson who visits either every or every other week; and her parents whom she indicates reside with her in the United States part of the year and reside in Peru during the winter; as well as the loss of her employment in the United States and stated economic and emotional concerns related to relocation. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Peru.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether he 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.