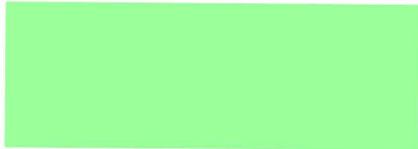


(b)(6)

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



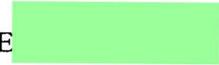
U.S. Citizenship
and Immigration
Services



DATE: **MAR 11 2014**

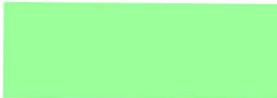
Office: NEWARK, NEW JERSEY

FILE



IN RE:

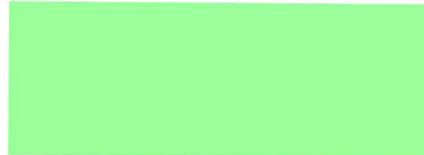
Applicant:



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:

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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed.

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 admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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. *Decision of the Field Office Director*, dated January 20, 2012. The AAO also found that the applicant failed to establish that his spouse would experience extreme hardship and dismissed the appeal accordingly. *Decision of the AAO*, dated August 28, 2013.

On motion, counsel asserts that the AAO did not have the full record before it and a complete record, including affidavits and supporting evidence, is being submitted with the motion to reopen. *Form I-290B, Notice of Appeal or Motion*, filed September 26, 2013.

The record contains, but is not limited to, affidavits from the applicant, his spouse, his son's mother, and his daughter; an employer's letter; a landlord's letter; medical records; financial records; photographs; and immigration documents. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the updated evidence that includes new facts, the requirements of a motion to reopen have been met.

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 reflects 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, [REDACTED]. He was permitted to withdraw his application for admission after he explained under oath that he had purchased these travel documents in Peru. He returned to the United States in 1999 and entered without being admitted. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for

misrepresenting his identity to request admission into the United States in 1995. The applicant does not contest the finding of inadmissibility.

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 AAO will first address hardship to the applicant’s spouse if she relocates to Peru. The applicant’s spouse, a native of Peru, states that she has resided in the United States since 2000 and cannot see herself living in Peru separated from her stepson and their adult daughter. She states that their 25 year-old daughter plans to continue college and become a nurse and that she needs her mother for support. The applicant’s spouse also states that she has become very close to the applicant’s son, age 7, and considers herself his second mother. Her stepson’s mother states that the applicant’s departure from the United States would be a nearly unbearable hardship for their son, with whom the applicant is close. She details the daily interaction of the applicant and their son and states that she would not let their son go to Peru with the applicant. The applicant’s daughter states that she also has a good and loving relationship with the applicant and speaks to him every day.

The applicant’s spouse indicates that her parents are lawful permanent residents who reside with the applicant and her in the United States part of the year and in Peru during the winter due to their health conditions. The record includes no information about other family ties to Peru.

The applicant’s spouse states that she has pain, deterioration and a tumor in her hands. The applicant’s spouse’s physician writes that the applicant’s spouse was seen in his office on January 30, 2012, due to a fall a year earlier, for which she was treated with a pain reliever. The record also includes evidence that she has experienced knee and back pain. According to a letter from her employer, the applicant’s spouse works part-time “for physical and medical reasons.” The letter includes no other details about the applicant’s physical conditions. The applicant’s spouse states that she has no corroborating evidence of her physical conditions because she cannot afford to see a doctor and does not have insurance.

The record reflects that the applicant's spouse may experience emotional hardship if separated from her daughter, parents and stepson due to hardship that they may experience without her and the applicant. Specifically, the applicant's son and daughter have a close relationship with the applicant and his spouse, and the children likely would experience emotional hardship without them; and the applicant's spouse's parents live with the applicant and his spouse and also may experience hardship without them. Hardship to the applicant's children and in-laws can be considered only insofar as it causes hardship to the applicant's spouse. However, the record does not include sufficient evidence to establish that the applicant's spouse is unable to work in Peru as a result of a physical injury. The record includes no evidence of other types of hardship to the applicant's spouse if she were to relocate to Peru to be with the applicant. The record therefore lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon relocation to Peru.

The AAO will now address hardship to the applicant's spouse if she remains in the United States. The applicant's spouse states that she would be separated from her stepson, as she does not have visitation rights; and she has become close to him. According to her stepson's mother, the applicant's spouse would have no legal right to visit him, and the break-up of her close-knit family "could destroy her." She also states that the applicant's spouse may help watch the child while she is working. The applicant makes similar claims concerning the relationship between his spouse and son.

The applicant's spouse states that she would experience financial hardship without the applicant, because he pays all of their expenses, including rent, food and utilities; and the applicant also supports their daughter and pays her full college tuition. The applicant's spouse states that she would have to "shoulder all of [their daughter's] obligations"; she provides her with clothing and rental assistance; the applicant earned \$36,545 and she earned \$21,840 in 2012; and this income enabled the applicant to pay for rent, utilities and child support. The applicant makes similar claims. Their daughter states that the applicant financially supports her and will help her pay approximately \$17,000 in student loans after she graduates.

The applicant's spouse asserts 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; as noted above, the evidence indicates she works part-time. The applicant's spouse also indicates that the applicant financially supports her parents and his son. She states that she would feel obligated to financially support her stepson, and she would have to work more hours to do this. Her stepson's mother states that the applicant's spouse would feel she needed to help financially support the child, as the applicant would not make enough money in Peru to do so. The record includes documentation that the average monthly salary in Peru for an auto mechanic is \$198. The applicant's child's mother explains that she has no court order or written agreement for child support, because the applicant voluntarily provides \$200 to \$250 in monthly child support, and this amount varies based on his weekly income. The record includes numerous notarized translations of statements concerning receipt of funds by the applicant's child's mother and the applicant's journal entries concerning child-support payments. The record also includes leases, copies of rent checks and a

notarized letter from a prior landlord as evidence of the family's housing expenses; and their 2011 and 2012 tax returns and 2012 W-2s to corroborate claims concerning the family's income.

The record reflects that the applicant's spouse may experience some emotional and financial hardship without the applicant. However, the record does not contain documentary evidence corroborating claims that the applicant supports his in-laws or his adult daughter, which could support the assertion that his spouse would experience hardship as a result of her family's hardship. The record, moreover, does not include sufficient evidence to establish that the applicant's spouse is unable to work full-time as a result of her injuries. Concerning the emotional hardship she would experience as a result of potential separation from her stepson, the record indicates that the stepson's mother is comfortable with the relationship the applicant's spouse has with him, and nothing in the record shows that she would not permit the applicant's spouse to continue their relationship. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether he merits a waiver as a matter of overall 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 motion is granted and the prior AAO decision is affirmed.