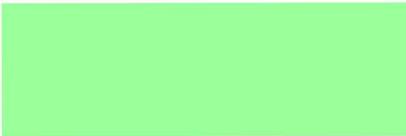




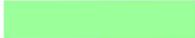
**U.S. Citizenship  
and Immigration  
Services**

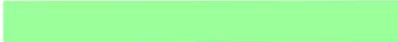
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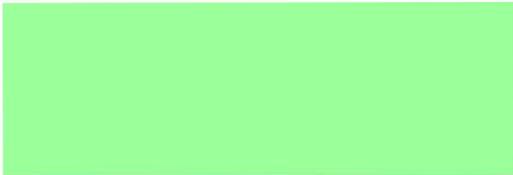
Office: NEWARK

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the 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  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Newark, New Jersey, denied the waiver application, which 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 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 the beneficiary of a spousal Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, April 29, 2014.

On appeal, counsel for the applicant contends that USCIS erred in concluding that the applicant's wife would not suffer extreme hardship as a result of the applicant's inadmissibility if he is unable to remain in the United States and failed to give appropriate weight to the factors favoring issuance of a waiver. In support, counsel provides a brief and the hardship statement of the applicant's wife. The record also contains documentation submitted with the waiver application, including: hardship and supportive statements; birth, marriage, divorce, and naturalization certificates; financial information, including tax returns, W-2s, bank statements, lease contract, utility bills, and evidence of other expenses; copies of travel documents, including passport pages, a visa, and a Form I-94; a psychological evaluation; and photographs. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 [...].

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States [...], and who again seeks admission within 3 years of the date of such alien's departure or removal, [...] is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

The record reflects that the applicant admits entering the United States in March 1995 without inspection and admission or parole, remaining until departing in 1999, and reentering the country on March 1, 2001 using a B1/B2 visa issued the previous year. The applicant does not contest that he claimed in his June 22, 2000 nonimmigrant visa application not to have been in the United States previously.

The field office director found the applicant inadmissible under section 212(a)(6)(C)(i), for fraud and willful misrepresentation regarding his U.S. presence. The record further reflects the applicant is inadmissible for accruing more than one year of unlawful presence after April 1, 1997 until his 1999 return to Peru. Therefore, he requires a waiver in order to immigrate.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 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 stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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-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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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;

the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the evidence on the record establishes that the cumulative effect of problems impacting his wife does not represent hardship that rises to the level of "extreme." The applicant's wife states that she has no family ties in Peru and has lived here for over 20 years, and she lives with the applicant and her 16-year-old son from a previous relationship. Her son lives with her but

spends time with her former spouse,<sup>1</sup> and there is no evidence of other family members in the United States. The record shows that she emigrated from her native Peru as a young adult, naturalized in 2011, and married the applicant in 2012. She worked full-time in the past but is currently working part-time. Although the applicant expresses worry for the safety of his wife and stepson in Peru, he provides no documentation showing they would be exposed either to general or targeted violence, and the qualifying relative's statement indicates no safety concerns about moving back. We note that there are no U.S. Department of State Travel Warnings regarding Peru currently in effect. Further, the applicant has not established that his stepson would be unable remain in the United States in the home of his biological father, with whom the record reflects he maintains an ongoing relationship despite living with his mother. There is no indication the applicant's wife would, as a result of moving overseas to stay with her husband, experience more than the common or typical consequences of removal or inadmissibility.

Regarding the claim of emotional hardship due to separation if the applicant's wife does not accompany the applicant overseas, the record reflects that she and her husband married less than three years ago. A psychiatrist states that the applicant's wife reports no symptoms of any mood, anxiety, or psychotic disorder, but is experiencing emotional strain and managing the pressures of a stressful job. *See Psychological Evaluation*, undated, based on a March 2013 interview with the applicant and his wife. The report concludes the applicant's absence would be upsetting to the qualifying relative's son, thus causing strain within the family. Although we are sensitive that the applicant's inability to remain here would impose hardship on his family, the evidence on the record does not establish that his spouse would experience hardship beyond the common results of removal or inadmissibility if separated from the applicant.

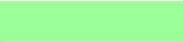
The evidence on the record is also insufficient to establish that the applicant's departure would result in financial hardship to his spouse. Documentation shows that prior to marrying the applicant, the applicant's wife earned a higher income than her husband, but that they reported approximately equal contributions to household income on their 2013 tax return.<sup>2</sup> The applicant's wife claims to be working part-time, but the record reflects that her 2011 income from full-time employment was over \$37,000, and there is no indication that she is unable to earn a higher income by returning to full-time status. Regardless of whether she regains her previous income level, documentation fails to establish that her current earnings are insufficient to meet her daily living expenses. Further, there is no evidence regarding the child support, if any, being provided by the applicant's son's father. Based on the evidence, although sensitive that removal of the applicant's earnings may lower household income, we conclude that the applicant has not shown his inability to remain here would make his wife unable to meet her financial obligations.

For all these reasons, the cumulative effect of the emotional and financial hardships a qualifying relative will experience due to the applicant's inadmissibility does not rise to the level of extreme. We are sensitive that the applicant's inability to remain in the United States will impose some

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<sup>1</sup> There is no documentation on record regarding the custodial arrangement.

<sup>2</sup> The applicant's 2013 W-2 states earning of \$31,616, while his wife had W-2 earnings of \$19,347 and unemployment compensation of \$11,674 for an income of \$31,021.



hardship on his wife. We find, however, based on the record that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship that is beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States. We recognize that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and we thus find that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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.