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

U.S. Citizenship
and Immigration
Services

Date: OCT 03 2014 Office: OAKLAND PARK, FL

FILE: [REDACTED]
[REDACTED] CONSOLIDATED

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Oakland Park, Florida, denied the waiver application, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, and the underlying application approved.

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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. On appeal, the AAO affirmed that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact, his marital status, in order to procure an immigration benefit. On the applicant's first motion, the AAO found he had submitted additional, sufficient evidence to demonstrate that his spouse would experience extreme hardship upon relocation to Peru, but the record contained insufficient documentation to establish extreme hardship upon separation from the applicant.

On this motion to reconsider, counsel contends the AAO abused its discretion by concluding the record did not contain sufficient evidence on the medical hardships the applicant's spouse would face without the applicant present. Counsel additionally claims the AAO erred by failing to properly apply the preponderance of the evidence standard, and taking into account any credible evidence. Counsel asserts that the AAO did not properly take into account the medical, emotional / psychological, and other impacts of separation the applicant's spouse may experience.

The record includes, but is not limited to, the following documents: briefs in support; evidence of birth, marriage, divorce, and citizenship; affidavits from the applicant and his spouse; copies of the applicant's spouse's medical records; a letter from the spouse's chiropractor; letters from the couple's employers; copies of tax returns, bills, and other financial documents; articles on country conditions in Peru; articles on medical conditions; and other applications and petitions. The entire record was reviewed and considered in rendering this decision on the motion.

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

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive

the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

On appeal, we affirmed the Field Office Director's finding that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having concealed his marital status to procure an immigration benefit. This finding is not contested on the applicant's second motion. Therefore, we again find that the applicant is inadmissible for misrepresentation of a material fact in order to gain an immigration benefit.

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.

Counsel first claims that the AAO failed to properly apply the preponderance of the evidence standard, in that the medical records, progress notes, medical bills, and the letter from the spouse’s chiropractor were sufficient for the AAO to arrive at conclusions about the spouse’s medical conditions.

Counsel correctly states that the petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). However, it is the applicant’s burden of proof to demonstrate that the applicant is eligible for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). In this case, the applicant has not clearly demonstrated, by a preponderance of the evidence, what medical-related hardship his spouse will experience without him present. As previously stated, there is no clear indication from an expert, such as statements in a letter from the spouse’s chiropractor or another medical services provider, or even in the submitted medical bills and records, that the applicant’s assistance is necessary in terms of his spouse’s present or future medical needs. As the applicant has not supplemented the record with this documentation, or with other evidence on the spouse’s specific medical situation, as set forth in our July 18, 2014, decision, we cannot find that the applicant has met his burden of proof in this respect.

Counsel also contends that the Second Circuit Court of Appeals found in *Mendez v. Holder*, 566 F.3d 316, 322 (2nd Cir. 2009) that testimony, along with medical records and a doctor’s letter simply stating the treatment and frequency of the treatment, were sufficient to find the requisite hardship. We note that the Second Circuit’s decision in *Mendez v. Holder* is not binding in this present matter, as the applicant does not reside within the jurisdiction of the Second Circuit.

Nevertheless, in that case the Second Circuit did not make a determination that any specific documentation or testimony was sufficient for a finding of hardship as counsel claims, but rather, remanded to the Board for reconsideration of the evidence. *Mendez*, 566 F.3d at 323.

Furthermore, the applicant continues to make claims related to the financial difficulties his spouse would experience upon separation. However, he submits no additional evidence on his income with this second motion, despite indications in our prior decision that such evidence was necessary to demonstrate the degree of financial hardship the applicant's spouse would experience without the applicant's financial support. *See AAO Decision*, July 18, 2014.

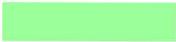
However, the applicant has provided supplemental documentation on his spouse's psychological difficulties. On this second motion, in support of assertions on psychological hardship, the applicant submits articles on psychological difficulties, his spouse's supplemental statement, and evidence of a prescription. In the AAO's July 18, 2014, decision, the spouse's psychological difficulties were acknowledged. The applicant's spouse has described her depression in her affidavits, and has provided some evidence, such as the prescription for anti-depressant medication, to demonstrate that she receives some treatment for these issues. In addition, the AAO again notes that the applicant and his spouse have been together for approximately 15 years, and that throughout this time, he has provided her with emotional support.

The applicant did not submit the documentation, noted on the prior decision, on the assistance required due to his spouse's medical conditions, or evidence on his income. However, we find that the applicant has supplemented the record with evidence on the spouse's emotional difficulties upon separation, which are exacerbated by the length of their relationship and the spouse's age. When considered with the evidence previously submitted, the record supports a conclusion that the spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the psychological / emotional and other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Peru without his spouse.

The AAO previously found that the applicant's spouse would experience extreme hardship upon relocation to Peru. As there is nothing in the record indicating this finding should be disturbed, we affirm this finding.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the



social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The negative factors include the applicant's entry without inspection, his misrepresentation, evidence of employment in the United States without authorization, and a 1998 conviction for Driving Under the Influence. The positive factors include the extreme hardship to the applicant's spouse, and the applicant's residence of long duration in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden, the prior decisions of the AAO are withdrawn, and the underlying appeal is sustained.

ORDER: The motion is granted and the underlying application approved.