

(b)(6)



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: JUN 19 2015

FILE #: [Redacted]

APPLICATION RECEIPT #: [Redacted]

IN RE: Applicant: [Redacted]
[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Dallas, Texas, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, a native and citizen of Peru, was found to be inadmissible 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative filed by his U.S. citizen spouse and seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

In a decision dated July 7, 2014, the Field Office Director concluded that the applicant did not establish extreme hardship to the qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant submits additional evidence concerning his spouse's mental and physical health and states that his spouse will suffer extreme hardship if his waiver application is not approved.

In support of the waiver application, the record includes, but is not limited to: statements from the applicant and his spouse; biographical information for the applicant, his spouse, his stepdaughter, and the couple's son; medical records for the applicant's spouse; mental-health evaluations of the applicant's spouse; financial documentation; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(6)(C) states:

- (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 procured admission to the United States on February 16, 2003 using a Peruvian passport and U.S. non-immigrant visa bearing the applicant's photograph, but the identity of another individual. As a result, the applicant is inadmissible under section 212(a)(6)(C) of the Act. The applicant does not contest the finding of inadmissibility.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

(1) The Attorney General [now the Secretary of the Department of Homeland Security (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.

A waiver of inadmissibility under section 212(i) of the Act is available on a showing that the bar to admission imposes extreme hardship on a qualifying relative, a U.S. citizen or lawfully resident spouse or parent of the applicant. The qualifying relative in this case is the applicant's U.S. citizen spouse. Hardship to the applicant or the applicant's children is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and we 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 deportation, 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, 885 (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 1292, 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.

On appeal, the applicant states that his spouse would suffer emotional, physical, and financial hardship that cumulatively amounts to extreme hardship should she be separated from him. The record establishes that the couple was married on [REDACTED] 2012, and is raising the applicant’s spouse’s [REDACTED]-year-old daughter from her previous marriage, as well as the couple’s [REDACTED]-year-old son. The record also establishes that the applicant’s spouse suffered an ectopic pregnancy in July 2013 and underwent surgery, which resulted in the loss of one of her fallopian tubes. The applicant’s spouse, in her statement, describes how her life was challenging as a single mother before she met the applicant, and she states that the thought of being separated from him causes her significant stress. A mental-health evaluation dated May 2013 provides historical background that the applicant’s spouse relayed to the counselor: that she was raised by her grandmother in El Salvador and experienced prolonged separation from her biological parents, who immigrated to the United States before she did. According to that evaluation, the applicant’s spouse stated that it also causes her emotional stress to think of her child being separated from his father or mother due to immigration issues. She also reports emotional stress and guilt associated with her two previous failed marriages and the effect on her daughter from her first marriage. That mental-health evaluation also includes an interview with the applicant’s stepdaughter, who reported her close relationship with her biological father and wept at the mention of the applicant leaving for Peru, because she feared her mother would relocate with him. The applicant’s spouse also explains in the evaluation that the thought of being a single mother again has affected her ability to sleep. The

evaluator concluded that the applicant's spouse was suffering from depression and anxiety and noted that family separations have been difficult in the past for the applicant's stepdaughter, and the applicant's spouse feels significant responsibility for her daughter's mental health.

According to a second mental-health evaluation dated July 25, 2014, the applicant's spouse is suffering from major depressive disorder and generalized anxiety disorder, and as a result takes medications to help with her anxiety and insomnia issues. The evaluation includes copies of the applicant's spouse's self-reporting on various mental health tests and checklists, which indicate that the applicant's spouse reports intense emotional and physical symptoms associated with her fear of being separated from the applicant, including headaches, restlessness, dizziness, confusion, irritability, and nightmares among others. Although this report includes incorrect information concerning the country of relocation and inconsistent information about the applicant's spouse's employment- stating that the applicant's spouse is having trouble with her employment as a result of her mental state where the other documentation in the record indicates that the applicant's spouse is no longer employed, but rather cares for the couple's children- the report establishes that the applicant's spouse has been diagnosed with depression and anxiety and currently attends weekly psychotherapy sessions.

The applicant's spouse further states that when the applicant entered her life, she obtained financial security and stability and that she would not be able to support herself and her two children were the applicant to depart the United States. The couple indicates that the applicant's spouse no longer works outside the home, where she previously worked as a customer service representative. The applicant's spouse 2011 federal income tax returns indicate that she earned \$29,141 that year. The record does not contain evidence of the applicant's financial contributions to the family; however, were the applicant's spouse to return to the work force earning what she earned in 2011, supporting a family of 3, and assuming that the applicant would not be able to financially assist her from Peru, she would be just above the poverty line of \$25,112.¹ The applicant's spouse notes that there would be little if no money left for her and their children to visit the applicant in Peru. Although individually these factors would not amount to extreme hardship, the cumulative hardship experienced by the applicant's spouse as a result of permanent separation from the applicant would be extreme.

The applicant's spouse, a native of El Salvador who speaks Spanish, states that she would not relocate to the applicant's native Peru in the event that the applicant were removed to that country, as she shares custody of her [redacted] year-old-daughter with her ex-husband. The applicant's spouse's divorce decree establishes that, unless the parties agree or the court orders it, the applicant's stepdaughter is not to reside outside [redacted] or any contiguous county as long as her father resides in [redacted] or any contiguous county. The record also establishes that the applicant's spouse maintains the primary residence of the child and offers visitation to the child's father.

¹ This amount reflects the minimum income requirements for use in completing Form I-864, Affidavit of Support, and is 125 per cent of the U.S. Department of Health and Human Services' poverty guideline for a family of three. See <http://www.uscis.gov/sites/default/files/files/form/i-864p.pdf>.

The applicant's spouse also states that she has never been to Peru, all of her family ties are in the United States, and she understands that Peru is a poor country, so she likely would not find employment there. In addition, she informed a therapist that her mother-in-law, the applicant's mother, was robbed at gunpoint in front of her house in Peru in 2014, and she fears for the safety of her family in that country. The mental-health reports in the record indicate that the applicant's spouse suffers from significant anxiety, in addition to establishing her close relationship with her daughter. For those reasons, cumulatively, the record establishes that the applicant's spouse would suffer extreme hardship were she to relocate to Peru with the applicant.

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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*



The favorable factors in this matter are the extreme hardship to the applicant's U.S. citizen spouse, the applicant's close relationship with his U.S. citizen son and stepdaughter, and the hardship they would experience without him. In addition, although the record indicates that the applicant was convicted for driving while intoxicated (DWI) in 2007, it also includes documentation showing that he completed substance-abuse counseling and that he has had no additional contact with the criminal justice system. The unfavorable factors are the applicant's procurement of admission to the United States through misrepresentation, a period of unauthorized presence, and his DWI conviction. The applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

ORDER: The appeal is sustained.