

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



(b)(6)



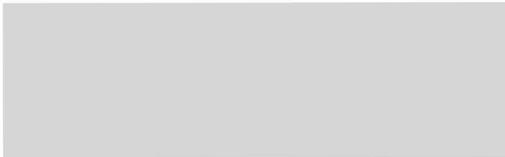
DATE: JUN 25 2015

FILE: [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [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:



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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The record establishes that 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, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a nonimmigrant visa and subsequent entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had 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, accordingly.

In support of the appeal counsel for the applicant submits the following: a brief, affidavits from the applicant and his spouse, medical and mental health documentation, financial documentation, support letters on behalf of the applicant, photographs of the applicant and his spouse, information about country conditions in Peru, and documentation concerning an attack against the applicant's brother in Peru. The entire record was reviewed and considered in rendering this decision.

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

- (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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 . . .

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation, the field office director determined

that the applicant had procured a fraudulent nonimmigrant visa and subsequently entered the United States with the visa. On appeal, the applicant maintains that he did not know the nonimmigrant visa he utilized to procure entry to the United States was fraudulent or that it belonged to someone else.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The record establishes that at the applicant's I-485 interview in July 2013, the applicant provided a written statement in which he stated that he went to the embassy and presented himself and he received the passport with the visa at his home. In the applicant's June 2014 statement submitted with the Form I-601, the applicant states that he never went to the embassy, but that he gave his passport, identification documents, two passport pictures, and money to individuals who he had been told would help him obtain a nonimmigrant visa. The applicant further states that at some point later, he was contacted by one of the individuals who told him to meet her at the bus stop. During that meeting, she handed the applicant an envelope. The applicant maintains that he was then contacted to go the airport, and at the airport, he was handed his flight ticket and passport and told he could fly to the United States, which he did.

The applicant's June 2014 statement is in direct contradiction to the statement he provided at his I-485 interview approximately one year earlier. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As such, this office concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation.

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. The record establishes that the applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the applicant's

spouse's relatives can be considered only insofar as it results in hardship to a 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 BIA 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 BIA 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 BIA 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 BIA 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

speaking 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir.1998) (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 U.S. citizen spouse contends that he would experience emotional and financial hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. The applicant's spouse maintains that she is pregnant with her first child and she needs her husband by her side. She further asserts that although she is gainfully employed, the applicant assists with the financial responsibilities of the household and without his income, she would not be able to meet all their financial obligations. She also maintains that she sends money each month to her mother and sister in Peru, and were her husband to relocate abroad, she would not be able to continue supporting her mother and sister and they would suffer, thereby causing her hardship. The applicant's spouse also states that she suffers from migraines that have increased since the problems with her husband's immigration case came up, and as a result, some days she is unable to drive, cook, take care of herself, or go to work, and she needs her husband to help care for her.

In support, the applicant has submitted a letter from his spouse's treating physician, who states that the applicant's spouse suffers from migraine headaches for which she takes medications, gastritis and nausea. Another letter from a different treating physician confirms that the applicant's spouse is pregnant and is experiencing panic attacks which have caused her to leave work early. Documentation from the applicant's spouse's employer confirms the applicant's spouse's numerous absences (Paid Time Off) due to stomach issues and headaches. As for the financial hardship referenced, the record establishes the applicant's financial contributions to the household. Further, the financial documentation establishes that without the applicant's financial contributions, the applicant's spouse would be unable to meet all the family's financial obligations. As noted by the applicant's spouse, she makes approximately half of the amount the family needs to ensure that all their financial obligations are met. The record also establishes the financial contributions the applicant's spouse is making to her mother and sister in Peru.

Finally, numerous letters from the applicant's friends and family outline the hardship the applicant's spouse would experience were she to remain in the United States while the applicant relocates abroad. The applicant has thus established that his spouse would experience extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility.

In regard to relocating abroad to reside with the applicant, the applicant's U.S. citizen spouse states that she has been residing in the United States for over a decade and long-term separation from her father, her half-sisters, her community, the medical professionals who treat her, and her gainful

employment at a senior living facility, would cause her extreme hardship. She further maintains that there are no jobs for her in Peru and she will be in constant fear for her safety. She references that her brother-in-law suffered a serious attack in Peru. The applicant has submitted documentation establishing the problematic country conditions in Peru and evidence of his brother's attack while in Peru.

The record reflects that the applicant's U.S. citizen spouse has been residing in the United States for over a decade. Were she to relocate to Peru to reside with the applicant, she would have to leave her parent and half-sisters, her community, her friends, affordable and effective medical treatment for her conditions, and her gainful employment, and she would be concerned for her safety in well-being in Peru. The applicant has thus established that his spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen wife would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the

exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to relocate to Peru, regardless of whether she accompanied the applicant or stayed in the United States; the applicant's community ties; support letters from friends and family members; gainful employment; the apparent lack of a criminal record; the applicant's volunteer work for the Latino/Hispanic community through the Alianzas organization; and the payment of taxes.

The unfavorable factors in this matter are the applicant's entry to the United States by fraud or willful misrepresentation and periods of unlawful presence and employment while 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 and the appeal will be sustained.

**ORDER:** The appeal is sustained.