



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-E-D-L-C-B-

DATE: OCT. 21, 2015

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Peru, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director of the Newark, New Jersey Field Office denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant 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 procuring a visa and admission to the country by fraud or the willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130), filed on his behalf by his U.S. citizen spouse. He filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), under section 212(i) of the Act, in order to reside in the United States with his spouse.

The Director determined that the Applicant did not establish that extreme hardship would be imposed on his spouse if she remained in the United States or if she relocated with the Applicant to Peru. The Form I-601 was denied accordingly. *See Decision of the Director*, dated November 15, 2014.

On appeal, the Applicant asserts that his spouse will experience extreme emotional, physical, and financial hardship if he is denied admission into the United States. The Applicant asserts that the evidence also establishes that a favorable exercise of discretion is merited in his case. In support of these assertions, the record includes, but is not limited to, affidavits from the Applicant, his spouse, and family members; medical and financial evidence; and documentation establishing relationships and identity.

The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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 chapter is inadmissible.

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Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states:

(1) The Attorney General [now the Secretary 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.

The record reflects that the Applicant stated that he was married to [REDACTED] on a U.S. nonimmigrant visa application signed by the Applicant on November 6, 2008. Although the Applicant indicates in an affidavit submitted on appeal that he and the mother of his children lived together for many years in Peru, and that this is often referred to as a marriage in his culture, he provides no evidence to support this assertion or otherwise establish that he was considered to be married to [REDACTED]. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for willfully misrepresenting a material fact to procure a nonimmigrant visa.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Moreover, once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 of Immigration Appeals (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,

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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 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 (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.

In the present matter the Applicant's qualifying relative is his U.S. citizen spouse. To establish that his spouse would experience extreme emotional and financial hardship if he is denied admission and she remains in the United States, the Applicant submits affidavits, psychiatric and medical records, and financial documentation.

The Applicant asserts that he and his spouse, whom he married in [REDACTED] 2012, are happy together and that his spouse depends on him emotionally and financially. He asserts that his spouse would struggle to pay their bills alone and that she also has medical problems as well as a "tendency for depression at times." In addition, he states that his elderly father-in-law is ill and depends on the Applicant's spouse to care for him. The Applicant also indicates that his stepson is unemployed and depends on the Applicant and his spouse for support.

The Applicant's spouse asserts that it would destroy her physically and emotionally if the Applicant returned to Peru. She states that she and the Applicant do everything together and that she would be lost without him. She also indicates that the Applicant's immigration situation has caused her to feel depressed and that she cries and cannot sleep. She states that she worries about how she will pay their bills alone, and she expresses concern that her ability to work would be affected if she became depressed. The Applicant's spouse states that she has had problems coping with difficult situations since childhood, and that she went to mental health clinics as a teenager due to pressure and bullying. She states that she also suffered from depression before and after her son's birth, that she was admitted to a hospital psychiatric unit, and that she suffers from seasonal depression every seven or eight years. The Applicant's spouse also states that she has taken medication for depression and anxiety in the past. In addition, she indicates that she is not physically healthy; that her health would deteriorate if the Applicant were not allowed to remain with her in the United States; and that she suffers from borderline blood sugar levels, hypothyroidism, cholesterol and weight issues, high blood pressure and sleep apnea. She asserts that she and the Applicant also reside with her son and father, that she usually takes care of her father, and that her son is not working. She states further that she is "not in a position to go back and forth to Peru" and that she does not know whether she would do so.

The Applicant's father-in-law states, in a March 20, 2015 affidavit, that when his daughter is "not in a good state of mind, she sometimes gets depressed." He states further that he "would not be able to go on" without his daughter and the Applicant, and that his daughter gives him daily assistance with meals and gets his breakfast and pills ready before she goes to work. He states that the Applicant's spouse also assists with his laundry and shopping, makes doctor appointments for him, deals with his insurance problems, helps with his medical bills, and pays for a portion of his utility bills.

The record also contains affidavits from the Applicant's stepson which state his opinion that the Applicant and his mother are very close, that a prolonged separation would be devastating to their family, that his mother has suffered from anxiety and depression in the past, and that he worries the conditions will return if the Applicant does not remain in this country with his mother.

Hospital discharge summary evidence, dated August 31, 1988, reflects that the Applicant's spouse was admitted to the hospital for psychological evaluation for a week when she was 22 years old, based on anxious and depressed mood symptoms related to her pregnancy becoming a single parent. The Applicant was diagnosed with adjustment crisis with mixed emotional features. Generalized anxiety was ruled out, and she was discharged at her own request and referred for psychiatric outpatient follow-up services.

The psychiatric evaluation does not corroborate claims that the Applicant's spouse's ability to work and function would be diminished if the Applicant were denied admission into the country and she remained here. The psychiatric evaluation relates to a hospitalization that occurred 27 years ago as a result of emotional issues related to her pregnancy and becoming a young single parent. The record contains no documentary evidence to demonstrate that the Applicant's spouse required psychiatric

services after her August 1988 hospitalization. Moreover, the record lacks evidence to demonstrate that the Applicant's spouse has experienced ongoing mental health problems since childhood.

Medical evidence contained in the record includes a medical prescription list, medical exam information, and a letter indicating that the Applicant's spouse suffers from seasonal allergies. The record does not contain an explanation from a medical doctor stating or diagnosing medical conditions, clarifying prescription information, or indicating that the Applicant's spouse would experience medical hardship if she remained in the United States, separated from the Applicant.

The record also lacks evidence of the Applicant's father-in-law's medical conditions or establishing that he is dependent upon the Applicant's spouse for daily care. It is also noted that the Applicant's spouse's 1988 psychiatric evaluation indicates that the Applicant has a brother and a sister. Letters from the Applicant's spouse's family members indicate that her sister and father live in close proximity. The record lacks information or evidence addressing why the Applicant's father-in-law could not be cared for by the Applicant's spouse's siblings.

Financial documentation includes evidence of the Applicant's spouse's employment; the Applicant's and her spouse's 2014, Form 1040, U.S. Individual Income Tax Returns and Form W-2, Wage and Tax Statements; bank account evidence; auto insurance coverage and EZ Pass bill information; and phone bills for the Applicant's spouse. While the evidence demonstrates some of the Applicant's and his spouse's expenses, the information is limited, in that it does not demonstrate their daily or overall expenses, or how bills are divided among all of the family members in the Applicant's spouse's house. The evidence does not demonstrate that the Applicant's spouse would experience financial hardship if she remained in the United States without the Applicant. Moreover, life insurance benefit information contained in the record reflects that the Applicant's stepson is 27 years old, and the record lacks information to demonstrate that he is financially dependent on the Applicant.

The evidence in the record is insufficient to demonstrate that the Applicant's spouse suffers from emotional or health conditions that would cause her to experience extreme hardship if she remained in the United States without the Applicant. The record also does not demonstrate that the Applicant's spouse is financially dependent upon the Applicant, or that she would experience extreme financial hardship if she remained in the United States. Considering the evidence in the aggregate, the record is insufficient to establish that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission into the country and she remains in the United States.

The evidence is also insufficient to establish that the Applicant's spouse would experience extreme hardship if she relocated to Peru with the applicant. The Applicant's spouse indicates in her affidavit that she is a U.S. citizen and that she does not want to go to Peru; however, she provides no explanation or information to demonstrate why she does not want to move to Peru or to establish the hardship she would suffer if she relocated to Peru. The Applicant does not discuss any hardship that

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his spouse would experience if she relocated with him to Peru, and the record lacks evidence concerning conditions in Peru.

Overall, considering the evidence in the aggregate, the record is insufficient to establish that the Applicant's spouse would experience hardships in Peru that would rise above the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has therefore not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. Having found the Applicant ineligible for relief, we find no purpose would be served in discussing whether the Applicant merits a waiver as a matter of discretion.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-E-D-L-C-B-*, ID# 12804 (AAO Oct. 21, 2015)