

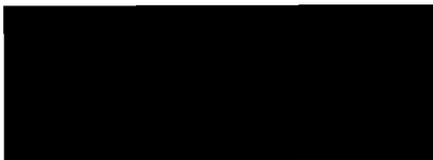
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



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



H6

DATE: Office: LIMA, PERU

File: [Redacted]

JUN 20 2011

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 5, 2009.

On appeal, the applicant's spouse states that she is suffering emotional and financial hardship due to the applicant's inadmissibility. *Form I-290B*, received on April 7, 2009.

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-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

The record indicates that the applicant entered the United States with a B1/B2 visa in April 2002 and remained beyond his authorized period of stay until he departed in September 2004. The applicant accrued unlawful presence from January 2003 until September 2004, a period over one year. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, statement from the applicant's spouse; statements from the applicant's step sons; medical records pertaining to the applicant's spouse; a statement from [REDACTED], dated March 20, 2009; a statement from [REDACTED], dated March 23, 2009; copies of the applicant's birth certificate and his spouse's naturalization certificate; a copy of the applicant's spouse's divorce decree from a previous marriage; and documents filed in relation to the applicant's DS-230.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 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.

The applicant’s spouse has submitted a statement asserting that she had lived in the United States for nearly 30 years and that relocating to Peru would result in a cultural hardship for her. *Statement of the Applicant’s Spouse*, undated. The applicant’s step-sons have submitted a statement asserting that it has been hard for their mother to travel back and forth to see the applicant. *Statement of the Applicant’s Step-son*, March 22, 2009; *Statement of the Applicant’s Step-son*, March 20, 2009. The applicant has submitted a statement asserting that it has been hard for his spouse to travel back and forth to the United States and that it has resulted in separation hardship from her two sons, who reside in the United States, and that the applicant and his spouse wish to pursue their economic goals in the United States. *Statement of the Applicant*, undated.

An examination of the record reveals that there is no evidence to support the assertions of the applicant’s spouse. The AAO would note that in a letter originally submitted with the applicant’s waiver she stated that she had been residing in Peru for four years. *Statement of the Applicant’s Spouse*, undated. It was also acknowledged by the applicant that he and his spouse were residing in

Peru. *Statement of the Applicant*, undated. This fact runs contrary to the assertion that it would constitute a hardship for her to reside in Peru with the applicant.

The record does not contain sufficient evidence to establish the financial impact of departure. Although the applicant suggests that the applicant's spouse has experienced financial hardship due to travel back and forth to the United States to see her sons, there is no documentation in the record to support this. The applicant has not submitted documentation to establish what his income is, what income his spouse may have previously earned or what their financial obligations may be. Without this evidence the AAO cannot determine that the financial impact from relocation on the applicant's spouse rises above the norm.

The AAO acknowledges that the applicant and his spouse would prefer to reside and work in the United States, and that she will be separated from other members of her family, but there is insufficient evidence to establish that these impacts, even when considered in aggregate, rise above the common impacts of relocating abroad. As such, the record does not establish that a qualifying relative will experience extreme hardship upon relocation.

With regard to hardship upon separation, the applicant's spouse's sons have submitted letters each stating that their mother was diagnosed with manic depression (bipolar disorder) after her divorce from their father. They explain that they were forced to grow up dealing with their mother's condition.

The record contains a statement from [REDACTED], stating that the applicant's spouse was under his care on April 14, 1991 for Bipolar Disorder, and that she was referred to a Community health center for follow ups. There is a statement from [REDACTED], dated March 23, 2009, stating that the applicant's spouse was a client at the [REDACTED] from June 2000 through November 2003, as well as other records indicating that the applicant's spouse was a client at the facility during that time period.

While these documents indicate that the applicant's spouse may have previously been diagnosed with Bipolar Disorder, there is nothing in the record which indicates that she is currently suffering emotional hardship. There is no current diagnosis of depression or other disorder, nothing which indicates any previous conditions she had still exist or that they are not under control and nothing which indicates she is at risk of experiencing any mental health issues. The statements of the applicant's spouse's sons are not professional medical opinions and are not sufficient to establish that she suffers from any type of emotional or mental health issues. Without further evidence which establishes that she is experiencing emotional hardship which rises above that commonly experienced by the relatives of inadmissible aliens the record does not establish emotional impact as an uncommon hardship factor to the applicant's spouse.

The record lacks any evidence of financial hardship. Although the applicant's spouse has asserted that it has been financially difficult for her to travel back and forth to Peru, there is no documentary evidence to support these assertions. There is no breakdown of the applicant's spouse's financial

obligations, no evidence of income or lack thereof or any evidence of costs she has incurred due to the applicant's inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Even when these hardships are considered in aggregate the record fails to establish that the applicant's spouse would experience uncommon hardships rising to the level of extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces hardship if he is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.