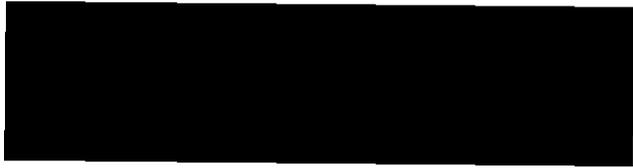


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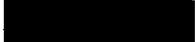
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



tl6

DATE: AUG 09 2012

Office: SAN JOSE

FILE: 

IN RE: Applicant: 

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

Thank you,

for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Jose, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record establishes that the applicant is a native and citizen of Bolivia who entered the United States with a valid nonimmigrant visa in August 2000 and remained beyond the period of authorized stay. The applicant did not depart the United States until December 2005. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident children, born in 1990 and 1994.

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. *Decision of the Field Office Director*, dated April 16, 2010.

In support of the appeal, the applicant's spouse submits the following: a statement, dated May 15, 2010; financial documentation; evidence of the applicant's youngest daughter's lawful permanent resident status as of January 2010; documentation regarding the applicant's spouse's family member's lawful permanent resident status; employment documentation pertaining to the applicant and her spouse; medical records; and country condition documentation for Bolivia. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the Attorney General (Secretary) 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, her children or her husband's extended family 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 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 U.S. citizen spouse asserts that he will suffer emotional, physical and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he explains that he loves his wife very much and without his wife, he will lose part of his soul. The applicant’s spouse further details that his wife contributes approximately 30% of the household income and without her continued financial support, he will not be able to keep up with all the household bills and continue to financially support his stepdaughters. Moreover, the applicant’s spouse maintains that his parents came to the United States in 2007 as refugees and are disabled and do not speak English. He notes that his wife is a caregiver to them and to his elderly grandparents as well and without her presence, he will not be able to properly care for them. Further, the applicant’s spouse details that he suffers from a number of medical and mental health conditions, including high cholesterol, migraine headaches, kidney stones, anxiety disorder, and agoraphobia with panic and insomnia and is receiving treatment but he needs his wife to help care for him. Finally, the applicant’s spouse contends that he is currently attending college but without his wife’s daily presence and financial contributions, he will not be able to continue his education as he will have to work more hours to make ends meet. *Statement of Appeal from* [REDACTED] [REDACTED] dated May 15, 2010.

In support, documentation has been provided establishing the applicant’s financial contributions to the household and the applicant’s and her spouse’s debt obligations. In addition, a letter has been provided by [REDACTED] DO, confirming that the applicant’s spouse is under professional care for hyperlipidemia, migraine headaches, kidney stones, generalized anxiety disorder, agoraphobia with panic, insomnia and dysthymia. [REDACTED] concludes that a number of the applicant’s

spouse's medical conditions have worsened secondary to the life stresses created by the applicant's inadmissibility finding. *Letter from [REDACTED]* dated April 29, 2010. Evidence of medications prescribed to the applicant's spouse to treat his conditions has also been provided. Finally, evidence of the applicant's spouse's college enrollment has been provided.

The record reflects that the cumulative effect of the emotional, physical and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

With respect to relocating abroad, the applicant's spouse explains that he was born in Iran and has no ties to Bolivia. Moreover, he asserts that he does not know how to read or write in Spanish and he would suffer in Bolivia as he would be isolated from all that is familiar to him, he would be unable to communicate and he would not be able to obtain gainful employment to maintain his standard of living and continue to meet his debt obligations in the United States. In addition, the applicant's spouse details his extensive family ties in the United States, including the presence of his parents and elderly grandparents and his two step-daughters, and contends that long-term separation from them, and his long-term employment with Adobe Animal Hospital, would cause him hardship. Further, the applicant's spouse asserts that as a result of the problematic country conditions in Bolivia, including substandard medical care and high crime, he worries for his health and safety. *Supra* at 2-5.

The record establishes that the applicant's U.S. citizen spouse was born and raised in Iran and has no ties to Bolivia. He is unfamiliar with the language, culture and customs of the country. He would have to leave his parents, his grandparents, his step-daughters, his friends, his community, the medical professionals familiar with his conditions and treatment plan, and his long-term gainful employment. Moreover, the U.S. Department of State confirms that Bolivia is a medium to high crime threat country and personal hygiene and sanitary practices in food handling are far below U.S. standards. *Country Specific Information-Bolivia, U.S. Department of State*, dated November 30, 2011. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds 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). The AAO 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 and two daughters would face if the applicant were to reside in Bolivia, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's long-term gainful employment in the United States; community ties; the applicant's apparent lack of a criminal record; and the payment of taxes. The unfavorable factors in this matter are the applicant's periods of unlawful presence and unauthorized employment while in the United States.

The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.