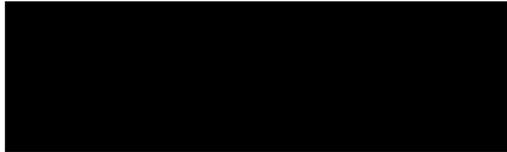




U.S. Citizenship
and Immigration
Services



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Date: **DEC 08 2012** Office: LIMA, PERU FILE:

IN RE:

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

ON BEHALF OF APPLICANT:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 Uruguay who was 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 and seeking readmission within ten years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility to reside in the United States.

In a decision, dated April 12, 2011, the field office director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated May 6, 2011, counsel states that the field office director failed to consider the hardship factors to the applicant's spouse in the aggregate, but instead considered each factor in isolation. He states that the applicant did prove extreme hardship to his spouse.

The record indicates that the applicant entered the United States on the visa waiver program on January 22, 2001. The applicant remained in the United States after his 90 day period of authorized stay had expired, not departing until November 29, 2007. Therefore, the applicant accrued unlawful presence from April 2001 to November 2007. In applying for an immigrant visa, the applicant is seeking admission within ten years of his November 2007 departure from the United States. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

(B) 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. Hardship to the applicant 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 record of hardship includes two briefs from counsel, a statement from the applicant’s stepson, two statements from the applicant, a statement from the applicant’s spouse, medical documentation, an employment letter, country conditions information on Uruguay, and documentation stating information about gaining permanent residency in Uruguay.

Counsel is claiming that the applicant’s spouse is suffering extreme emotional and financial hardship as a result of being separated from the applicant because she is unable to pay all of her bills with her income and she is suffering major depression. We find that the medical documentation in the record states that the applicant’s spouse has been suffering major depression since September 27, 2010 triggered by the separation from her husband, is on medication for her depression, and sees a psychiatrist periodically. However, the record does not indicate that the emotional hardship the applicant’s spouse is suffering is above and beyond what would normally be expected when a husband and wife are separated. The medical note in the record does not provide any detail as to how the applicant’s spouse’s doctor came to the diagnosis of major depression, what kinds of symptoms the applicant’s spouse is experiencing,

and how these symptoms are affecting the applicant's spouse's life. In regards to financial hardship, the record shows that the applicant's spouse earns \$7.40 per hour as a retail sales associate and has two sons, one married with children and another who is now 19 years old. The record does not include financial documentation to show that the applicant's spouse is suffering financially nor does the record show that the applicant's adult children or the applicant in Uruguay are unable or unwilling to help her with her financial obligations. Thus, the current record does not indicate that the applicant's spouse is experiencing extreme emotional hardship as a result of the applicant's inadmissibility.

Similarly, we do not find that the applicant will suffer extreme hardship as a result of relocating to Uruguay. Counsel claims that the applicant's spouse would suffer extreme emotional and financial hardship if she relocated to Uruguay. He states that the applicant will suffer emotionally as a result of being separated from her children and relocating to a country where she has no family ties; that she will suffer significant financial losses as a result of losing her home and employment; that she will not be able to find employment in Uruguay; and that in Uruguay she will be at risk of torture and gender violence. Counsel also asserts that the applicant will have to become a permanent resident to find employment in Uruguay and that the process to become a permanent resident is long and cumbersome.

We acknowledge that the applicant's spouse has no ties to Uruguay and would have to leave her children to relocate, but the applicant's spouse speaks Spanish, is familiar with Uruguay as she has visited many times, and both of her children are now adults, with the youngest having ties to his birth father in the United States. The record also indicates that the applicant is employed in Uruguay and does not show that his income would not support himself and his spouse. Furthermore, although the record shows that numerous documents need to be submitted to gain residency in Uruguay, it does not suggest that the process is particularly lengthy or an unfair burden on the applicant's spouse. The record also fails to support the assertions regarding the financial losses the applicant's spouse would incur as a result of relocation. The record does not show that the applicant's spouse owns a home in the United States or that she would lose her home upon relocation. The AAO also finds that the record does not show that the applicant has a significant history of employment with her employer in the United States and would suffer a significant financial loss if she left her employer.

Finally, contrary to counsel's assertions concerning the country conditions in Uruguay, the record does not show that the applicant's spouse would be a likely victim of torture or gender violence upon relocation. Counsel asserts that Uruguay allows police and military to torture persons who have been detained and that the applicant's spouse, as a foreigner and minority, would likely be detained. We find that this statement is not supported by the record. A more careful reading of the Amnesty International article submitted by counsel indicates that in October 2009 Uruguay was having a national referendum on a law that would not allow for the prosecution of police or military officials for crimes committed in or before 1985, noting that this time frame covers the 11 year period from 1973-1985 when Uruguay was a dictatorship and thousands of cases of torture and disappearance were documented. This article in no way

indicates that police or military officials in Uruguay currently torture detainees nor does any part of the record indicate that the applicant's spouse would be at risk for detention. Counsel also cites to a gender equality report and the U.S. State Department Human Rights Report for Uruguay asserting that the applicant's spouse's physical integrity will not be adequately protected in Uruguay, violence against women remains a problem, and that there have been credible allegations of ill-treatment and excessive use of force in prisons, police stations, and juvenile detention centers. We acknowledge that the reports indicate that domestic violence is a problem in Uruguay and that gender violence crimes are not always prosecuted. However, the record does show that domestic violence and rape are considered crimes in Uruguay and can be prosecuted. Again, although counsel asserts that the applicant's spouse would be a likely victim of detention, torture, and gender violence, the record does not support his assertions. The U.S. State Department Background Notes for Uruguay, submitted by counsel, establish that Uruguay has been a constitutional republic since 1985, has a large urban middle class, a high literacy rate, and a relatively even income distribution. We acknowledge that conditions in Uruguay may not be of the same standards as conditions in the United States, but nothing in the record indicates that conditions in Uruguay are so outside the applicant's spouse's current experience in the United States as to cause her extreme hardship upon relocation.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) of the Act, the burden of proving eligibility remains entirely 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.