



U.S. Citizenship
and Immigration
Services

H6



Date: **DEC 31 2012**

Office:

LIMA, PERU

FILE:



IN RE:

Applicant:



APPLICATIONS:

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Peru 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 record indicates that the applicant is the son of lawful permanent residents of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), in order to reside in the United States with his parents.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 13, 2011.

On appeal, the applicant, through counsel, claims that the applicant's mother meets the extreme hardship standard. *Form I-290B, Notice of Appeal or Motion*, dated July 14, 2011. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and his mother, letters of support, medical documents for the applicant's mother, an employment document for the applicant's brother, a Social Security document in Spanish¹, identity documents for the applicant, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered, with the exception of the Spanish-language document, in arriving at a decision on the appeal.

Section 212(a)(9) 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

¹ Pursuant to 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As the Social Security document is in Spanish and is not accompanied by an English-language translation, the AAO cannot consider it in this proceeding.

within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.-The [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 [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 AAO notes that the record includes references to the applicant's brother's hardship; however, he is not a qualifying relative. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 of Immigration Appeals (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.

In the present application, the record indicates that in October 2002, the applicant entered the United States without inspection. On May 21, 2007, an immigration judge granted the applicant voluntary departure until August 20, 2007. The applicant requested an extension of his voluntary departure, which was granted until September 18, 2007. On September 16, 2007, the applicant departed the United States. The applicant accrued unlawful presence between October 2002 and September 16, 2007. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and he seeks admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

In his appeal brief, counsel claims that if the applicant's mother joins the applicant in Peru she would have to separate from her husband and abandon her lawful permanent resident status. Additionally, the family would suffer financial hardship by having to support the applicant's mother in Peru and having to re-establish her lawful permanent resident status when she returns to the United States. Other than these statements by counsel, no claim has been made that the applicant's mother will endure hardship should she relocate. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO acknowledges that the applicant's parents are lawful permanent residents of the United States, and that relocation abroad would involve some hardship. However, the applicant's parents are natives of Peru, and no evidence has been submitted showing that they do not speak Spanish, that they are unfamiliar with the customs and cultures in Peru, or that they have no family ties there. Additionally, the AAO notes that the applicant's parents are elderly; however, the record does not show that their family cannot continue to support them or that the applicant cannot support them in Peru. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his parents would suffer extreme hardship if they relocated to Peru.

Concerning the applicant's parents remaining in the United States, in her statement dated February 10, 2011, the applicant's mother claims that she needs the applicant in the United States because he takes care of her. In his statement dated January 6, 2011, counsel states when the applicant resided in the United States, he resided with his mother and provided her with "financial support, care giving, [and] transportation to medical appointments." Medical documents in the record establish that the applicant's mother suffers from various medical problems, including chest pains, arthritis, hypertension, cataracts, and osteoporosis. Additionally, the applicant's mother states she is suffering emotionally because of the separation from the applicant. Documentation in the record shows that the applicant's mother is depressed. The applicant states his departure from the United States has affected his mother "who requires supervision and emotional support." [REDACTED], a psychotherapist, states the applicant's mother has short-term memory problems that limit her daily functioning, and she has poor family support and limited English-language skills. The AAO notes that the applicant's mother's memory problems appear to be serious; however, no supporting documentary evidence was submitted providing details or explaining the seriousness of her condition.

In his statement dated March 4, 2011, the applicant states his parents need him in the United States to provide financial support. Counsel claims that the applicant's mother now relies on her other son who moved in with her and, as a result, had to postpone his marriage.

The AAO acknowledges that the applicant's mother is suffering emotionally in being separated from the applicant. While it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished his mother's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. With respect to the applicant's mother's medical hardship, although the record establishes that she suffers from several medical conditions, no medical documents have been submitted establishing that she requires the applicant's assistance because of her medical problems, or explaining the severity and limitations caused by her medical conditions. Moreover, though statements in the record refer to financial difficulties, the record does not contain evidence corroborating claims that the applicant's mother is suffering financial hardship. Additionally, the applicant has not distinguished his mother's financial challenges from those

commonly experienced when a family member remains in the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his mother would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident mother as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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 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.