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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**

H6

[REDACTED]

Date: **FEB 23 2012** Office: LIMA, PERU FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

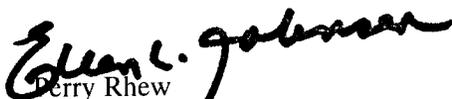
ON BEHALF OF APPLICANT:

[REDACTED]

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,


Perry Rhew
Chief, Administrative Appeals Office

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

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 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 is married to a U.S. citizen and 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 with her husband in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Acting Field Office Director*, dated September 23, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's husband has medical and psychological problems, and financially supports his daughter and grandchild.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on December 27, 2003; statements from the applicant; declarations from [REDACTED] a psychological report; a letter from [REDACTED] employer; copies of money transfers; a letter from [REDACTED] daughter; letters of support; letters from [REDACTED] physicians and copies of his medical records; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Peru; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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.

In this case, the record shows, and the applicant concedes, that she entered the United States in October 2003 without inspection and remained until February 2005. Therefore, the applicant is 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 one year or more and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant’s husband, [REDACTED] states that he is very sick, is in poor health, and does not want to live. He states that he has a growth in his anus that got infected, requiring surgery. He contends that no one stayed in the hospital with him, that there is still drainage that has to be cleaned frequently, and that he cannot ask anyone for help. He states he cannot drive, lift heavy things, or sit for long periods of time. [REDACTED] describes the experience as terribly humiliating and states he is at his wits end. He contends he has thought about hurting himself, but knows he cannot do so because he is a Christian. In addition, [REDACTED] states he has a daughter from a previous marriage and that he has primary custody of her. He states that his daughter got pregnant when she was fifteen years old and that she is currently pregnant with her second child. According to [REDACTED] he supports his daughter and his grandchild. Furthermore, [REDACTED] contends he cannot relocate to Peru to be with his wife because he would lose his job and he must care for his daughter and grandchild.

After a careful review of the record, the AAO finds that the applicant’s husband, [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The record shows that [REDACTED] is currently sixty-two years old and has numerous medical and psychological conditions. Two letters from [REDACTED]’s physicians and copies of medical records corroborate [REDACTED]’s claim that he had an abscess of his scrotum and an open wound after surgery to drain a perineal abscess. Copies of his medical records also indicate he has hyperlipidemia, hypertension, and obesity. Moreover, a psychological report in the record diagnoses [REDACTED] with separation anxiety disorder and panic disorder. According to the psychologist, if [REDACTED] remains separated from his wife, the prognosis is “calamitous.” In addition, letters from [REDACTED]’s daughter and church corroborate his claim that he is suffering severe emotional harm since his wife’s departure from the United States. Considering all of the evidence in the aggregate, the AAO finds that if [REDACTED] decided to stay in the United States, the

effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to Peru to avoid separation would be an extreme hardship for [REDACTED]. As stated above, the record shows that [REDACTED] underwent surgery and a letter from his physician confirms he is receiving ongoing postoperative care. Therefore, relocating to Peru would disrupt the continuity of [REDACTED] medical care. Moreover, a copy of a divorce decree in the record corroborates [REDACTED] claim that he has primary physical custody of his daughter, [REDACTED]. In addition, birth certificates in the record of [REDACTED] daughter and grandchild corroborate his claim that his daughter gave birth to a baby when she was fifteen years old. Although the record shows that Briseida is currently twenty-two years, according to [REDACTED], he continues to financially support his daughter and grandchild. Moreover, a letter from [REDACTED] employer shows that he has worked for the same employer for over twenty-two years. Relocating to Peru would mean [REDACTED] would lose a job he has held for over two decades. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he moved to Peru to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's initial entry without inspection and unlawful presence in the United States. The favorable and mitigating factors in the present case include: family ties in the United States including her U.S. citizen husband and step-daughter; the extreme hardship to the applicant's husband, step-daughter, and grandchild if she were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.