

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
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6



DATE: JAN 09 2012 OFFICE: LIMA, PERU

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 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 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 must 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 Field Office Director, Lima, Peru, denied the waiver application (Form I-601) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was further found to be inadmissible 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 and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 23, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship of a familial and economic nature if the waiver is not granted. See *Form I-290B*, Notice of Appeal or Motion and *Counsel's Brief*, both dated July 20, 2009.

The record contains, but is not limited to: Form I-601 and Form I-601 denial; Form I-212; application for immigrant visa and denial-related documents; letter from the applicant; hardship affidavit and affidavit of unemployment and hardship from the applicant's spouse; birth, marriage, and divorce records; records related to the applicant's attempted unlawful U.S. entry and subsequent expedited removal; and Form I-130. The entire record was reviewed in rendering a decision on appeal.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States on December 14, 1999 with a valid B1/B2 visa with authorization to remain until June 14, 2000. The applicant stayed in the United States beyond her authorized period of stay, remaining in the U.S. until March 7, 2003 when she voluntarily departed to Bolivia. The applicant accrued unlawful presence from June 15, 2000 to March 7, 2003. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her March 7, 2003 departure she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant attempted to re-enter the United States on April 8, 2005 by presenting in her passport a backdated Bolivian entry stamp, which she admits to obtaining in order to conceal her prior U.S. overstay. Based on the applicant's material misrepresentation, she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

A waiver of inadmissibility under sections 212(i) and 212(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. In the present case, the applicant's spouse is the only 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 record reflects that the applicant's spouse is a 47 year old native of Bolivia and citizen of the United States. The applicant states that after being removed to Bolivia in April 2005, she and her spouse met while he was there on vacation. See *Applicant's Letter*, dated October 21, 2008. The applicant's spouse states that he and the applicant married on April 1, 2006. See *Hardship Affidavit*, dated July 7, 2008. He states that due to the applicant's "inability" to enter the U.S., he has had to rearrange his life and is "being forced to continuously travel to and from Bolivia to the United States" to see his wife in Bolivia and his two daughters from a prior marriage in the U.S. *Id.* The applicant's spouse states that he loves his daughters, who live with his former wife, wants to see them grow up, is responsible for child support payments, but is unable to keep a permanent job in the U.S. *Id.* He states that when in the U.S. he works temporarily as a freelance presser, a job that he states does not pay very well. *Id.* The record contains no documentary evidence of the earnings of the applicant's spouse as a presser. The applicant's spouse states that he is "temporarily residing outside of the United States until my wife's petition for legal permanent residency is approved." See *Affidavit of Non-Employment and Hardship*, dated July 7, 2008. He states that his unemployment is "based on my current circumstances of having to live in Bolivia with my wife." *Id.* The applicant's spouse states that in Bolivia, his "income is derived from a Beauty parlor that my wife owns. I assist her in the business as much as I can." *Id.* The applicant's spouse states that it is a financial burden for him to continue traveling between countries and that he is torn between being with his wife in Bolivia and his two daughters in the U.S. *Id.* Counsel asserts that if the applicant's spouse "chooses to remain in Bolivia with his current wife, he will not be able to make enough money to support himself and his children in the United States." See *Counsel's Brief*, dated July 20, 2009. The record contains no documentary evidence of the applicant's income in Bolivia or the United States. Nor does it contain documentary evidence of his expenses or obligations in either country. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Though understandably difficult, being "torn between" family members in two countries is a type of hardship ordinarily associated with the inadmissibility or removability of a family member.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the record reflects that the applicant's spouse has been living in both Bolivia and the United States for a number of years, dividing his time between his wife and his daughters. As addressed *supra*, the applicant's spouse states that it is a financial burden for him to continue traveling between the countries and that he is torn between being with his wife in Bolivia and his two daughters in the U.S. See *Affidavit of Non-Employment and Hardship*, dated July 7, 2008. The applicant asserts that in Bolivia, "the political and economic situation is

getting worse day by day” and life is becoming very difficult. See *Applicant’s Letter*, dated October 21, 2008. Counsel refers to a September 13, 2008 Travel Warning alerting U.S. citizens of “the unstable social and security situation in Bolivia.” See *Counsel’s Brief*, dated July 20, 2009. Counsel asserts that “increasing violence towards United States citizens makes Bolivia an unsafe place” for Americans, and refers to a “Warden message” regarding kidnapping which was released by the U.S. Embassy in La Paz on April 21, 2009. Counsel asserts that “animosity against United States citizens has increased since the election of President Morales and an individual who has become a naturalized US citizen is seen to worst type of traitor.” *Id.* The AAO notes that there is currently no U.S. Travel Warning for Bolivia. The record contains no documentary evidence addressing country conditions in Bolivia. Nor does the record contain any documentary evidence or assertions by the applicant’s spouse that he has experienced violence or discrimination while living in Bolivia. The evidence in the record is insufficient to establish that the applicant’s spouse would face significant danger in Bolivia should he choose to relocate to be with the applicant.

Counsel asserts that “Bolivia is one of the poorest countries in Latin America. Poverty affects the quality of life of the majority of the population, and restricts the right to enjoy and exercise the human rights of those affected.” See *Counsel’s Brief*, dated July 20, 2009. The record contains no documentary evidence addressing poverty in Bolivia. The record reflects that the applicant owns a beauty salon in Bolivia where her spouse is also employed. Though no documentary evidence has been submitted showing the income and expenses of the applicant or her spouse in Bolivia or the United States, the AAO notes that the latter travels regularly between the two countries and secures work in both. The evidence in the record is insufficient to establish that the applicant’s spouse would be unable to support himself and his family if he chooses to relocate to Bolivia to be with the applicant.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i)(1) and 212(a)(9)(B)(i)(II) 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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.