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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

**PUBLIC COPY**

H6

Date: JAN 11 2012 Office: LIMA, PERU FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: 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:

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.

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 waiver application was denied by the Officer in Charge (OIC), Lima, Peru. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the OIC and the AAO will be affirmed.

The applicant is a native and citizen of Peru who accrued unlawful presence from August 2000, the date she entered the United States without inspection, until April 2006, when she departed the United States. On or about November 10, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On March 16, 2007, the OIC denied the applicant's Form I-601, finding the applicant had been unlawfully present in the United States for more than one year and was seeking readmission within ten years of her last departure from the United States, and she had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the Officer in Charge*, dated March 16, 2007. On March 29, 2007, the applicant filed an appeal of the OIC's decision with the AAO. On July 1, 2009, the AAO dismissed the applicant's appeal. On July 31, 2009, the applicant filed a motion to reopen and reconsider the AAO's decision

In its July 1, 2009 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act. On motion, the applicant asserts that her daughter is suffering extreme emotional hardship and submits evidence in support of her claim. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record in support of the applicant's motion includes, but is not limited to, statements from the applicant and her husband, a psychological report on the applicant's daughter, and an earnings statement for the applicant's husband. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

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 [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 the present case, the record indicates that in August 2000, the applicant entered the United States without inspection. In April 2006, the applicant departed the United States. The applicant accrued unlawful presence from August 2000, the date she entered the United States without inspection, until April 2006, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her February 2006 departure from the United States. 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 seeking admission within 10 years of her departure from the United States.

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 or her children can be considered only [REDACTED] 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 United States Citizenship and Immigration Service (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 a statement dated July 21, 2009, the applicant’s husband states that in Peru there “is not a sure job site for him.” The AAO notes that other than the applicant’s husband’s statement, the applicant has not submitted any documentary evidence, e.g., country conditions reports on Peru, that demonstrate that the applicant’s husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Additionally, the AAO notes that other than the applicant’s husband’s statement, the applicant has not asserted that her husband will endure hardship should he relocate to Peru. In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges her husband will face outside the United States. The applicant bears the burden to show extreme hardship to her qualifying relative in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant’s husband would experience if he joined the applicant in Peru, the AAO does not find the applicant to have established that her husband would suffer extreme hardship upon relocation.

The applicant's husband states "the sudden change of country and [their] separation has been a shock for" his daughter, and he is worried about her. In the applicant's statement on appeal, the applicant claims that her daughter has been "the most affected with this separation." In a psychological report dated July 30, 2009, psychologist [REDACTED] indicates that the applicant's daughter is anxious and depressed, and she recommends that the applicant's daughter attend psychotherapy. The applicant states that her daughter's "frequent melancholy and sadness diagnosis could become...childhood depression." She claims that because of her "weak mental health," her daughter could "be influenced" by "other negative facts" and she could be affected "more than what someone expects." The AAO acknowledges that the applicant's daughter may be suffering some emotional problems in being separated from her father. However, the AAO notes that the record does not establish that the applicant's daughter has to remain in the United States to receive treatment or that she cannot receive treatment in Peru. Additionally, the AAO finds that the applicant has not shown that hardship to her daughter has elevated her husband's challenges to an extreme level. However, the AAO notes the concerns for the applicant's daughter.

The applicant's husband states that when the applicant resided in the United States, they had purchased a franchise which the applicant helped to manage, but when she remained in Peru, he could not run the business alone. He states that with his income from [REDACTED], he supports his family in Peru. The AAO finds the record to include some documentation of the applicant's husband's income; however, this material offers insufficient proof that the applicant's husband has been unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has not established that she is unable to obtain employment in Peru and, thereby, financially assist her husband from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she 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 AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

**ORDER:** The motion is granted and the previous decisions of the Officer in Charge and the AAO are affirmed. The application is denied.