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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

[redacted]

H6

JAN 13 2012

DATE: 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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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.

Thank you,

for

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 sustained.

The applicant is a native and citizen of Peru. She 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure, and misrepresenting her identity by presenting documentation with a false name to U.S. border officers when attempting to enter the United States in 2000. She is married to a United States citizen. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 10, 2009.

On appeal, the applicant states that her husband is suffering financially and emotionally due to her absence, and that he needs her to prepare meals which suit his medical condition. *Form I-290B*, received on July 10, 2009.

The record includes, but is not limited to, a statement from the applicant's spouse; a statement from [redacted] dated June 30, 2009; copies of prescription notices; a psychological evaluation of the applicant's spouse by [redacted] Ph.D; a statement from [redacted], dated August 4, 2008; medical records and documents for the applicant's spouse pertaining to a back injury; court records for a lawsuit by the applicant's spouse against another driver; hospital records for the applicant's spouse; copy of a police report for an automobile accident involving the applicant's spouse; photographs of a damaged automobile.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

> (i) In general.-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 director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having used a false identity when attempting to enter the United States in May 2000. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant has not disputed her inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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.
>
> . . . .

The record establishes that the applicant entered the United States without inspection in June 2000 and remained until she departed voluntarily in July 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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) or 212(i) 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-Moralez,* 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 applicant's spouse asserts that he is experiencing physical, emotional and financial hardship due to the applicant's inadmissibility. *Statement of the Applicant's Spouse*, undated. He explains that he suffered a serious back injury in an automobile accident which has impaired his ability to perform his job, and that the applicant was primarily responsible for helping him care for his elderly mother. The applicant asserts that he has had back surgery, may need another surgery in the future and that this has made it difficult for him to maintain his employment. He states that the applicant was the one who provide physical assistance to his mother, including bathing her, administering her body cavity medications, cooking for her and helping her rehabilitate after ovarian surgery. He states that his mother also suffers from dementia and high blood pressure. The applicant explains that his current circumstances, including the absence of the applicant, has caused him to suffer from depression and anxiety, and notes that the applicant is a party to the accident which left him with a herniated disc and strained lumbar.

The record includes medical records, hospital records and doctor's statements which corroborate that the applicant's spouse was involved in a car accident which resulted in a back surgery. Records show that he had one surgery for his back and that he may need more surgery in the future.

The record also contains medical records corroborating the applicant's spouse's mother's physical conditions and medical history, indicating that she is elderly, nearly bedridden and suffers from hypertension related memory problems.

Court records and police reports also establish that the applicant and her spouse are parties to a lawsuit involving another driver responsible for causing their car accident and injuries.

The record also contains a psychological evaluation of the applicant's spouse from [redacted] concluding that the applicant's spouse is suffering from Adjustment Disorder with Mixed Anxiety and Depression. A statement from [redacted] explains that the applicant's spouse has been diagnosed with depression and hypertension and is currently on antidepressant medications. The record contains copies of prescription medication slips.

Based on the evidence in the record the AAO finds that the applicant's spouse is experiencing an uncommon physical impact due to having to provide care for his mother and manage his own physical injuries and struggling to remain employed. The evidence in the record also indicates that the applicant's spouse, due to the applicant's inadmissibility, his own medical injuries and caring for

his mother, is experiencing depression and hypertension. When the impacts upon separation are considered in the aggregate, the AAO can determine that the applicant's spouse will experience hardships rising above the common impacts experienced by the relatives of inadmissible aliens who remain in the United States. Therefore, the AAO finds that the applicant's spouse would experience extreme hardship as a result of separation from the applicant.

With regard to relocation, the AAO finds that the applicant would experience significant physical hardship from having to sever the ties to the doctors which are familiar with his medical history and have been treating him. In addition, the applicant's spouse is currently involved in a lawsuit in an attempt to recover compensation for the injuries he suffered due to an automobile accident. It is also evident from the record that the applicant's spouse would experience an uncommon separation hardship if he had to relocate due to the fact that his elderly, sick mother depends on him physically and financially for support. When these impacts are considered in aggregate they rise above the common hardships that would normally be experienced by the relatives of inadmissible aliens who relocate and thus constitute extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship the AAO may now determine whether the applicant warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the

exercise of discretion appears to be in the best interests of the country. " *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's unlawful presence, misrepresentation and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the extreme hardship the applicant's spouse would experience due to the applicant's inadmissibility, the care the applicant provides for her spouse's mother, and the lack of any criminal record during her period of residence in the United States. Although the AAO cannot condone her unlawful presence, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.