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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6



Date: **SEP 11 2012** Office: LIMA, PERU FILE:

IN RE: Applicant:

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:



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,

Perry Rhew
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 applicant is a native and citizen of Bolivia 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 one year or more and seeking readmission within ten years of his last departure from the United States.¹ The applicant's spouse is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated November 19, 2010.

On appeal, the applicant details hardship his spouse would experience if his waiver application is denied. *Form I-290B*, received December 15, 2010.

The record includes, but is not limited to, the applicant's spouse's statement, medical records, counsel's brief, financial records, the applicant's statement, photographs and country conditions information on Bolivia. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 2000 and he departed the United States on March 4, 2010. The applicant accrued unlawful presence during this entire period of time. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present for a period of one year or more and seeking readmission within ten years of his March 4, 2010 departure from the United States.

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

¹ The AAO notes that the applicant was convicted of trespassing and then building fires under California Penal Code Section 602(j), a misdemeanor, and he received two years of probation and monetary penalties. Under California Penal Code Section 19.2, the maximum sentence for a misdemeanor is one year. The AAO notes that even if the applicant's crime was found to be a crime involving moral turpitude under section 212(a)(2)(a)(i)(I) of the Act, the applicant would be eligible for the petty offense exception under section 212(a)(2)(a)(ii)(II) of the Act as he was not sentenced to a term of imprisonment in excess of six months and the maximum possible penalty for the crime does not exceed imprisonment for one year.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel states that: the applicant’s spouse has significant medical problems due to her osteoporosis; she would have to leave her employment and insurance benefits for the prospect of no employment and health insurance in Bolivia; there is a lack of access to comparable medical care and physical therapy for the applicant’s spouse’s osteoporosis; her daughter and grandchildren reside in the United States and she helps them financially; and she will have to take an early retirement and her retirement benefits would be low.

The applicant’s spouse makes similar claims as counsel. She states that her mother lives in Bolivia; it is dangerous in Bolivia, she is worried that the applicant will be killed there and she is afraid that she will never see her daughter and grandchildren again; and she will not have money to visit her daughter and grandchildren. *The applicant states that he could not find a job in Bolivia.*

The record reflects that the applicant’s spouse had a fractured hand in 2008; a fractured foot in 2009; she took a leave of absence in 2009 due to a serious health condition; and she is considered osteopenic and has a moderate fracture risk. The record includes an employer letter for the applicant’s spouse and general country conditions information for Bolivia.

The record reflects that the applicant's spouse has family ties in the United States and Bolivia. She is originally from Bolivia. There is no evidence that she would be relocating to a dangerous part of the country or that she could not obtain suitable medical care in Bolivia. The record does not include sufficient evidence that she would experience financial hardship in Bolivia. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon relocating to Bolivia.

Counsel states that: the applicant's spouse is emotionally and physically dependent on the applicant; the applicant helps cover the cost of rent, food and car payments, and takes his spouse to medical and therapy appointments; she has a stable job and health insurance; she has moved in with her in-laws as she cannot afford her rent by herself; she has lost 25 pounds since the applicant's departure to Bolivia and suffers from loss of appetite and sleep; she has had serious bone fractures in the past; the applicant would not be able to assist her if she had another accident; and the applicant would get a job and support her if he was in the United States.

The applicant's spouse makes similar claims as counsel. She states that it is dangerous in Bolivia and she is worried that the applicant will be killed there; she is having nightmares and wakes up crying; she feels anxious all of the time. The applicant states that his spouse is sending him money to survive on.

The record reflects that the applicant's spouse has a medical condition and would experience some emotional hardship without the applicant. However, the record does not include sufficient evidence that she would experience financial hardship without the applicant or that her fears for his safety are well-founded. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon remaining in the United States.

A review of the documentation in the record finds that the applicant has failed to show that a qualifying relative would suffer hardship that is unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, 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.