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

(b)(6)

[redacted]

Date: FEB 2 6 2013 Office: LIMA, PERU FILE: [redacted]

IN RE: [redacted]

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

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.

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,

Ron Rosenberg
Acting 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 dismissed.

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 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 more than one year and again seeking admission within ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director,* dated March 16, 2012.

On appeal, the applicant's attorney contends that the applicant has demonstrated that the qualifying spouse will experience extreme emotional, psychological, financial and social hardships if the applicant's waiver application is not granted. The applicant's attorney also states that the qualifying spouse has extensive family ties to the United States and that she suffers hardship in Peru because of her separation from her family and the conditions there.

The record includes, but is not limited to, an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an appeal brief; a declaration and letters from the qualifying spouse, family members and the applicant's employers; proof of the applicant's income in Peru; relationship and identification documents for the applicant, qualifying spouse and her family members in the United States; a psychological assessment regarding the qualifying spouse and two handwritten medical certificates; general information regarding depression; proof of the qualifying spouse's credit card and student loan debt; and police clearance documentation for the applicant in Peru. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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-
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> . . . .
>
> (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.

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) 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. The applicant's wife 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 hardship 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 hardship takes the case beyond those hardship 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 indicates that the applicant entered the United States with a valid tourist visa on or about April 1, 2001, and remained after his period of authorized admission in the United States, departing on or about December 31, 2005. The applicant accrued over one year of unlawful presence. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. Therefore, as a result of the applicant's unlawful presence, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not dispute the applicant's inadmissibility.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's spouse indicates in her declaration that her "life does not make sense without him." She also states that thoughts of being without him affect her emotionally and she relies upon the applicant for support. The record contains a psychological report that focuses on the qualifying spouse's hardships in Peru but does not provide sufficient detail regarding her potential hardship in United States. The record, moreover, has not been supplemented regarding her emotional hardships since her return to the United States. While it appears that the applicant's spouse may suffer emotionally as a result of her separation from the applicant, the record fails to demonstrate in sufficient detail how the qualifying spouse's experiences amount to hardship beyond that commonly experienced by other separated families. As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse would suffer emotional and other hardships as a result of her separation from the applicant that, considered in the aggregate, are extreme.

The AAO also finds that the applicant has not met his burden of showing that his qualifying spouse would suffer extreme hardship if she relocated to Peru to be with her. The applicant's spouse, a native of Peru, lived with the applicant in Peru after their wedding. The applicant's spouse describes feeling as though she does not "belong" in Peru. She also states that she became depressed and sought professional help there, which helped her. However, she also began experiencing stress,

which in turn caused a skin reaction and stomach condition. In her declaration provided on appeal, the qualifying spouse states that she is experiencing extreme hardship as a result of her separation from her family in the United States. The record confirms that she has extensive family ties to the United States, including her parents, grandmother, siblings and their children. The record also contains a psychological report prepared in Peru, in which she reported that she "misses her life in Miami, her family, her parents, brother and nephews and wishes to be with them." According to the report, the applicant's immigration issues cause her stress. The psychologist concludes that the applicant's spouse exhibits "emotional change and instability, change in sense of humor, depressive state, appetite disorders, anxiety and illness resulting from her emotional state, gastritis, face spots and vomiting." With regard to the qualifying spouse's assertions regarding the medical conditions that have manifested due to her psychological issues, the record contains two handwritten medical certificates diagnosing her with gastroesophageal reflux and urticaria and dermatitis seborrhea. Absent an explanation in plain language from the treating physician of the exact nature and severity of these conditions and a description of any treatment or assistance needed, the AAO is not in the position to reach conclusions concerning the severity of these medical conditions.

With regard to the qualifying spouse's financial hardships upon relocation to Peru, she states that she has been unemployed in Peru and that, as a result, she has been unable to pay approximately $15,000 in credit card debt; she also owes money for a student loan. She indicates that she and the applicant rely on assistance from the applicant's parents because of the applicant's low income. The record contains proof of the applicant's income in Peru and a letter from his father stating that they live on the first floor of his home. However, the record does not contain documentation to demonstrate that the applicant's spouse has sought employment in Peru or to show the extent of her financial hardship there. Similarly, the applicant's spouse states that she fears for her safety and well-being in Peru, though she lived there for seventeen years and returned to marry the applicant. The record does not contain country-conditions information or other evidence showing that the applicant or his spouse have had safety issues in Peru. In addition, the applicant's spouse started dating the applicant in 2009, while the applicant was living in Peru and had been for over four years. The qualifying spouse had reason to expect when they were married that the applicant may not be able to live with her in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567.

In this case the record does not contain sufficient evidence to show that the hardship faced by qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(a)(9)(B) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.