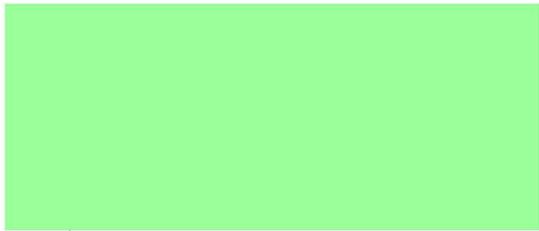


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **JAN 22 2013** OFFICE: LIMA, PERU

IN RE:

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 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

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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 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 10 years of the date of the applicant's departure. The applicant is the fiancée of a U.S. citizen and is the beneficiary of an approved Petition for Alien Fiancée. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to return to the United States to live with her U.S. citizen fiancé.

In a decision dated May 14, 2012 denying the Application for Waiver of Grounds of Inadmissibility, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and had failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen fiancé, the qualifying relative. *See Field Office Director's Decision*, dated May 14, 2012.

On appeal, the applicant's fiancé submits a brief, custody and child support order, birth certificates for his children, and an updated letter from his psychiatrist. The record also includes, but is not limited to, a hardship statement from the applicant's fiancé and the applicant, medical records, and divorce decrees for prior marriages.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(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 [Secretary of Homeland Security (the 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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

On her Form I-601, Application for Waiver of Grounds of Inadmissibility, the applicant stated that she resided in the United States from 2005 until 2009 without immigrant or nonimmigrant status. *See Form I-601, Application for Waiver of Grounds of Inadmissibility*, dated February 2, 2012. U.S. Citizenship and Immigration Services (USCIS) records show that the applicant entered the United States as a nonimmigrant visitor on July 6, 2004, with authorization to remain until January 5, 2005, but that she did not depart until November 6, 2009. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. Inadmissibility is not contested on appeal. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen fiancé.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 of Immigration Appeals 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

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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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant’s fiancé is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s qualifying relative.

The record establishes that the applicant’s fiancé will suffer extreme hardship upon relocation to Peru. The relevant evidence establishes that the applicant’s husband is the father of two children, ages 14 and seven, from a prior marriage for which he shares custody with his ex-wife in the United States. The record includes certificates of birth for his two children and legal documents showing that the home state of the children is Maryland and that the parents share physical

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custody of their children. The record further establishes that the applicant's fiancé has considerable ties in the United States, in addition to his immediate family members, including his job with his current employer since 1990 and his residence in Maryland since 2007. The record, in the aggregate, shows that the applicant's fiancé will suffer extreme hardship upon relocation to Peru.

However, the record, in the aggregate, does not establish that the applicant's spouse will suffer extreme hardship upon separation from the applicant. Regarding emotional and medical hardship, the applicant states that his family is incomplete without the love of his life and his stepson in the United States. The applicant's fiancé further states that he has been suffering from depression since 2007 and that separation from the applicant has taken an emotional toll on him making his depression worse, and increasing his insomnia and weight loss. The applicant's fiancé submits brief letters from his psychiatrist showing that he suffers from depression for which he takes medication. The letters state that the applicant's fiancé's condition has been exacerbated by the separation from his fiancé, but does not discuss specific changes in the qualifying relative's medical condition and how it has worsened since separation from the applicant. The applicant's fiancé further states that his seven-year-old son in the United States misses his stepbrother in Peru, but the record does not include evidence of the impacts of separation on the children and the impacts of the children's hardship on the qualifying relative. While the medical evidence indicates some emotional and medical difficulty, the record does not contain sufficient evidence showing that the applicant's fiancé will endure extreme emotional and medical hardship from separation from the applicant.

Regarding financial hardship, the applicant's fiancé states that he is unable to bear the costs of maintaining two households with his income. He states that his expenses have gone up as a result of a custody dispute with his ex-wife and separation from the applicant. The record does not contain evidence of income or expenses documenting the claimed financial difficulties. The record does not establish that the applicant's fiancé will endure extreme financial hardship from their separation.

The record lacks sufficient evidence demonstrating that the medical, emotional, financial, or other impacts of separation on the applicant's fiancé are in the aggregate above and beyond the hardships normally experienced, such that the applicant's fiancé would experience extreme hardship if the waiver application is denied and she remains separated from the applicant.

Although the applicant has established that her fiancé would suffer extreme hardship upon relocation to Peru, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA

1996). As the applicant has not demonstrated extreme hardship to her qualifying relative from separation, we cannot find that refusal of admission would result in extreme hardship to her qualifying relative.

The applicant has failed to establish extreme hardship to her U.S. citizen fiancé, as required under section 212(a)(9)(B)(v) 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 a 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. 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.