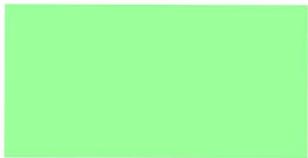


(b)(6)

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

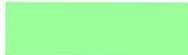


U.S. Citizenship
and Immigration
Services



Date: JUL 18 2013

Office: LIMA, PERU

FILE: 

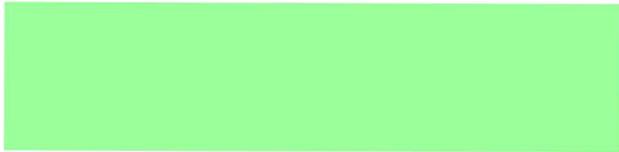
IN RE:

Applicant: 

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:



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

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lima, Peru. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will be approved.

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 her last departure from the United States. The record reflects that the applicant entered the United States with a B-2 visitor visa in 1996 when still a minor. She then remained in the United States beyond her authorized stay and after her 18th birthday, thus accruing unlawful presence until she departed in 2010. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The field office director found that the applicant had established extreme hardship to her qualifying relative spouse due to separation as a consequence of her inadmissibility, but failed to establish that her spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant. The application was denied accordingly. The director also determined that had extreme hardship to the qualifying relative been found, an unfavorable exercise of discretion would have been warranted due to the applicant's immigration violations and previous arrests and convictions. *See Decision of the Field Office Director* dated September 1, 2011.

On appeal the AAO found that the record did not establish that the applicant's spouse would experience extreme hardship if he were to relocate to Peru to reside with the applicant. The appeal was dismissed. *See Decision of the AAO* dated December 31, 2012.

On motion counsel for the applicant asserts that new evidence documents that the applicant's spouse would experience extreme hardship if he were to relocate abroad. With the motion counsel submits a brief; a mental health assessment of the applicant's spouse; an economic report about Peru from a country expert; an affidavit from the applicant's spouse; financial information for the spouse; a psychological evaluation of the applicant's daughter in Peru; pictures of Peru; and letters of support from friends. The entire record was reviewed and considered in rendering a decision on the motion.

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.

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 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-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 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

As noted, the AAO found that the record did not support the assertion that the applicant’s spouse would be unable to obtain a work permit and find employment as the spouse of a Peruvian citizen, and failed to specify any other hardships he would experience. As the field office director found the applicant had established extreme hardship to her qualifying relative spouse due to separation from the applicant, this finding was not be addressed by the AAO.

In his brief counsel asserts that due to the spouse’s psychological condition, relocation would cause extreme hardship, and cited a mental health assessment that suggests he would sustain extreme hardship should he relocate to Peru. Counsel asserts that the spouse’s psychological state is frail and that he has been diagnosed with Major Depressive Disorder, which has become worse, thus he is unable to cope with adjusting to a foreign country, culture, and environment, or undertake the task of leaving his country, work, and community. Counsel asserts the applicant’s spouse is barely making ends meet financially to support himself and his family in Peru while struggling to keep himself emotionally together and productive. Counsel contends that for the applicant’s spouse to leave his job in the United States to move to Peru and be poorly compensated even if able to obtain legal permission to work would be irresponsible to the family. Counsel states that an expert opinion on the economy of Peru indicates that given the spouse’s education, training and expertise he would plunge the family into abject poverty.

In his affidavit the applicant's spouse states he would be depressed if he relocated to Peru because he would not be able to provide for the family or pay for good schools as he believes public schools are dangerous for the children. He further states he fears kidnapping and other crime for himself and his children. He cites country information warning of conditions in Peru.

A mental health evaluation of the applicant's spouse, which indicates the reviewer met with the applicant on six occasions, notes he is severely depressed due to separation from the applicant and their children, has trouble concentrating and focusing, and is at risk of further deterioration. The evaluation notes he has a history of being suicidal with the loss of his family. The evaluation indicates the applicant's spouse is fragile and vulnerable to further psychiatric illness and that would deteriorate if he were to leave familiar surroundings. The evaluation describes the applicant's spouse as vulnerable to change in his immediate environment with a history of being unable to make appropriate and normal adaptations, and concludes that if he moves to Peru he would be unlikely to succeed.

An economic assessment of Peru states that, given the spouse's education and experience, he would experience extreme poverty in the labor market of Peru. It suggests that the spouse would be at a disadvantage as employers prefer Peruvian workers, so he would be forced to the informal market to live at subsistence level. The assessment asserts it "foolhardy" for the applicant's spouse to abandon employment in the United States to relocate to Peru. The assessment opines that the Peruvian culture is to take advantage of others thus making the applicant, as an American, likely to be targeted for economic crime and discrimination. It asserts the Peruvian job market usually only welcomes foreigners with high professional qualifications that the applicant spouse does not have.

The AAO finds that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant. The psychological evaluation establishes that the applicant's spouse has a history of depression and would likely be unable to adapt to Peru, outside the familiarity of his community, and thus experience greater depression. The economic report supports that the applicant's spouse would likely be unable to adequately support his family in Peru, thus adding to his emotional hardship. A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the circumstances presented in this application rise to the level of extreme hardship.

In that the applicant has established that the bars to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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

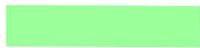
immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence 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, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 favorable factors in this matter are the hardships the applicant's United States citizen spouse and child would face if the applicant is not granted this waiver, and the applicant's support from the qualifying spouse and her family and friends in the United States. The adverse factors in the present case are the applicant's unlawful presence for which she now seeks a waiver, and the following convictions: disorderly conduct for which she paid a fine in 2004; violation of a protective order for which she was sentenced to a term of one year in 2006; and damage and interruption of a communication device for which she was sentenced to 180 days in 2006.

In appeal of the field office director's decision counsel states that the applicant and spouse had explained incidents of the applicant's criminal record and contends they do not show the applicant as a threat to public order or the safety of American society. Counsel points out that the field office director's decision discusses the discretionary factors, notably the applicant's arrests, convictions, and immigration violations. To address these counsel submitted affidavits from friends and relatives attesting to the character of the applicant and provided explanations from the applicant and her spouse of the events leading to the arrests and convictions.

Counsel contends the applicant's arrests and convictions happened at a time when she and her spouse were immature, and resulted in reduced or dismissed charges and suspended sentences. In the spouse's statement he contends that he had been unable to control his temper, had been frustrated by the applicant dating another person while the two were divorced, and had intentionally given her difficulty by refusing to pay child support. He states that during their fights he behaved immaturely and caused the applicant to react and that during one incident he called the police in an emotional response without thinking clearly. In the applicant's statement she explains that she and her spouse had divorced and were having problems due to child custody, but later reconciled and remarried.



Counsel also asserts the applicant's immigration violations arose from being brought to the United States as a child by her parents and that her only real violation was in 2003 when she refused to abide by a BIA order to leave the United States because she was then married, had finished high school, and had established a life in Utah with a daughter. The record reflects that in July 2003 the BIA affirmed the Immigration Judge decision denying the applicant's family asylum and withholding of removal, granting them voluntary departure up to 30 days with a failure to depart resulting in an order of removal.

Although the applicant's violations of the immigration laws and criminal convictions cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law and convictions, that no subsequent incidents have occurred and that she and her spouse have remained together as a family, and given the letters of support from her spouse and friends, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the waiver application will be approved.

ORDER: The motion is granted and the waiver application is approved.