



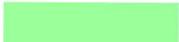
**U.S. Citizenship
and Immigration
Services**

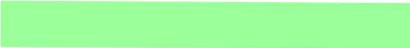
(b)(6)



DATE: **MAR 18 2013**

Office: LIMA, PERU

FILE: 

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

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

The applicant is a native and a 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 seeking admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and children.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated September 28, 2012.

On appeal, the applicant's spouse states that she cannot relocate to Peru because of her medical conditions and submits additional hardship evidence for consideration. *See Form I-290B, Notice of Appeal or Motion*, dated October 12, 2012.

The evidence of record includes, but is not limited to: statements from the applicant, his spouse, their children, their friends and their children's teacher; medical evidence, including letters from health-care providers; employment evidence for the applicant's spouse; school documents for the applicant's children; family photographs; and identification and relationship documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized

by the Attorney General [now Secretary of Homeland Security (Secretary)] or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in January 2001 without inspection and remained in the United States until March 2012, when he voluntarily departed. The AAO finds that the applicant accrued unlawful presence of more than one year, and because he is seeking admission within 10 years of his 2012 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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

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 . . . 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. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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).

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 factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardships to the applicant's children will not be separately considered, except as they may affect the applicant's spouse.

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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant's spouse states that she cannot relocate to Peru because she has pituitary tumors and "cannot regulate [her] stress response." Additionally, she states that she needs the applicant's assistance during her treatments in the United States, and their children also need him

while she is hospitalized or working. According to her health-care provider, the applicant's spouse receives treatment for a "micropituitary adenoma" and her symptoms include "headache, dizziness, and depression." [REDACTED] a licensed clinical social worker, states that the applicant's spouse's medical condition interferes with her "cognition and simple daily functioning," though she provides no details describing how her medical condition has changed the applicant's spouse's daily functioning. Additionally, [REDACTED] believes the applicant's spouse is "at risk for decompensation," which could negatively affect her ability to care for their children.

The applicant's spouse also states that their children are affected by the applicant's absence. Their school grades have fallen and they appear to be depressed. [REDACTED] a nurse practitioner, states that her office has been treating the applicant's children since their infancy, and during their last visit, they "demonstrated some depressive behavior related to the absence of their father." She is concerned about the children's well-being if the applicant remains absent for an extended period of time. One of their children's school teachers also has noticed that the child "has become despondent and quite melancholy" since she returned from Peru without the applicant.

With respect to hardship she may experience upon relocation to Peru, the applicant's spouse states that it would be "impossible" for her to receive the treatment she needs for her condition and she has no medical insurance there. She currently receives medical benefits through her employer. She also states that their children only speak English and they could not adapt to the educational system there. Moreover, they would not be able to afford to send their children to private schools offering bilingual education. She also is concerned about her ability find employment and for their safety in Peru.

Their friends attest to the loving relationship the applicant and his spouse have. They also state that the applicant's spouse's is experiencing emotional hardship without the applicant.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse is experiencing extreme hardship resulting from her separation from the applicant. In reaching this conclusion, we note the cumulative effect of hardships caused by the applicant's spouse's medical and emotional condition. She is being medically treated for her pituitary gland adenoma and depression. Her medical conditions are affecting her ability to perform simple tasks. Her health-care providers are concerned that she would further decompensate without the applicant's emotional support. The record also demonstrates that the applicant's spouse needs the applicant's presence to assist her during her treatments and to care for their children. Moreover, we note that the applicant's spouse's hardships caused by parenting three children of very young ages alone and her concerns about the negative effect the applicant's absence has on their children are compounding her stress. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse is experiencing extreme hardship resulting from their separation.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she relocates to Peru. The AAO notes that the applicant's spouse is from Peru and speaks Spanish. The record fails to provide documentary evidence corroborating claims that the applicant's spouse would be unable to obtain employment or receive adequate medical care in Peru. The assertions of the applicant's spouse are relevant evidence and have been considered. However,

absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

With respect to safety concerns, the AAO notes that the U.S. Department of State’s country-specific information on Peru, last updated on December 21, 2012, reports that violent crime, including carjacking, assault, sexual assault, and armed robbery is common in Lima. Although this country-conditions evidence is of concern, it does not, in and of itself, establish extreme hardship, and the record contains no other evidence to demonstrate that the applicant’s spouse would face danger in Peru. Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship the applicant’s spouse would experience, should she relocate, would not rise to the level of extreme.

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 separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to his qualifying family member if she relocates to Peru, 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)(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.