

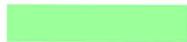


U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 23 2013**

Office: LIMA, PERU

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


f Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lima, Peru. The field office director's decision was appealed to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before the AAO on motion. The motion will be granted and the AAO's previous decision affirmed.

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 seeking readmission within 10 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.

In a decision, dated April 16, 2012, the field office director found that the applicant had failed to establish that his qualifying family member would suffer extreme hardship as a result of his inadmissibility. The field office director also found that the unfavorable factors in the applicant's case outweighed the favorable factors such that even if the applicant were to show extreme hardship to a qualifying family member, he would not warrant a favorable exercise of discretion.

On appeal, the applicant's spouse stated that the applicant is a good person and she submitted documentation regarding his moral character.

In our decision, dated May 21, 2013, we found that the record lacked the supporting documentation to show that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

On motion, the applicant states that because of the AAO's denial of his application, his spouse is under chronic emotional depression and is suffering physically, emotionally, and financially. In support of his motion the applicant submits: an updated statement from his spouse, two letters from two separate doctors treating the applicant's spouse, a psychological evaluation, three letters from friends attesting to the applicant's spouse's hardships, letters from family members, copies of prescriptions, financial documentation, and photographs.

Section 212(a)(9) of the Act provides:

(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 Attorney General 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 Attorney General 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 Attorney General regarding a waiver under this clause.

On appeal we found that the applicant was unlawfully present in the United States from April 1, 1997, the date the unlawful presence provisions were enacted, until October 2011, when he departed the United States and was, therefore, inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States and seeking reentry within 10 years of his last departure.

On appeal, we also noted that the applicant has a criminal record which includes four convictions from June 19, 2006, for knowingly violating a domestic abuse order under Wisconsin Statutes §813.12(8)(a). We noted that we were unaware of any precedent decision finding that a violation of a protective order is a crime involving moral turpitude and would thus make the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. We did find, however, that these convictions would weigh heavily against the applicant in a discretionary analysis.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband and parents are the qualifying relatives 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. *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.

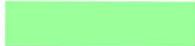
The record of hardship on appeal included: medical documentation, two statements from the applicant's spouse, and a letter from the applicant's stepson.

We previously found that the applicant's spouse's claims of emotional and financial hardship as a result of separation were not supported by the record because they lacked sufficient supporting documentation. We now find that the applicant has established that his spouse is suffering extreme emotional hardship as a result of separation. The statement from the applicant's spouse, medical documentation, and letters from friends and family, support the applicant's spouse's assertions regarding extreme emotional hardship. This documentation indicates that the applicant's spouse is being treated for depression, anxiety, insomnia, and headaches, which are affecting her ability to concentrate at work and her everyday functioning. The record indicates that the treatment the applicant's spouse is receiving is not improving her symptoms, which have been found to be caused by her husband's absence.

However, we do not find that the record establishes that the applicant's spouse will suffer extreme hardship as a result of relocating to Peru. On appeal the applicant submitted no documentation to support his spouse's claims regarding conditions in Peru. On motion, the applicant's spouse claims that she cannot relocate to Peru because she does not want to leave her family, including her mother, sister, and son in the United States; she owns a home in the United States; she fears crime and conditions of poverty in Peru; and she becomes sick from altitude sickness in Peru. We acknowledge that the applicant will have to separate from her familial and financial ties as a result of relocation, but the hardships she will face upon relocation do not amount to extreme hardship. The record indicates that the applicant's spouse is a native Spanish speaker from Cuba with many years of experience, as well as a Master's degree, in teaching. The record indicates that she was a teacher in Cuba and is currently working to become a certified teacher in the United States. The record also indicates that the applicant is an experienced auto mechanic. Nothing in the record indicates that the applicant and his spouse would be unlikely to find employment in their respective fields in Peru, or the actual severity of high altitude sickness in any particular city or region of Peru where she would be likely to reside, given differing altitudes across the country.

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(s) in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise 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 U.S. citizen spouse 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



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NON-PRECEDENT DECISION

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as a matter of discretion. However, we do note that the applicant's criminal record and the seriousness of some of his actions and statements are significant negative factors that could outweigh positive factors in this case.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

Accordingly, the motion is granted and the AAO's previous decision is affirmed.

ORDER: The AAO's previous decision is affirmed.