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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

[redacted]

H6

Date: DEC 0 2 2011 Office: NEW DELHI FILE: [redacted]

IN RE: [redacted]

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:

[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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of India who entered the United States in November 1991 without inspection and subsequently filed the Form I-589, Request for Asylum in January 1992. In October 1993, the applicant's request for asylum and withholding of deportation was denied and the applicant was granted voluntary departure on or before December 19, 1993 with an alternate order of deportation. The Board of Immigration Appeals (BIA) dismissed the appeal of the applicant's asylum denial on March 24, 1999 and the Ninth Circuit Court of Appeals denied the applicant's petition for review on October 17, 2000. The applicant departed the United States on May 23, 2007. The applicant accrued unlawful presence in the United States from October 17, 2000 until his departure in May 2007. The applicant was thus 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.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated June 10, 2009.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> 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.
> >
> > . . . .
> >
> > (iii) Exceptions
> >
> > > (II) Asylees
> > >
> > > No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the

> period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization.
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (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 Attorney General (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...

On appeal, counsel contends that the applicant does not need a waiver because the entire time he was in the United States he had an asylum application pending. *See Brief in Support of Appeal,* dated August 5, 2009. Despite counsel's contention, the record does not establish that the applicant had an asylum application pending the entire time he was in the United States. As noted above, the applicant's asylum appeal was dismissed by the BIA in 1999 and the Ninth Circuit denied the petition for review in October 2000. As of October 2000, the applicant's asylum application was no longer pending. Consequently, the applicant did not have an asylum application pending from October 17, 2000, when the Ninth Circuit denied the petition for review, until the applicant's departure in 2007. As such, the AAO concurs with the field office director that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children, born in 2001 and 2006.

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children 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-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 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 applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration the applicant's spouse asserts that it is extremely difficult on her emotionally to have her husband gone and as a result, she is suffering from severe depression and anxiety. In addition,

the applicant's spouse explains that prior to her husband's departure, she was a homemaker and was able to devote her time to her children, but since her husband's departure, she had become primary caregiver and provider to her young children and such an arrangement is causing her hardship. [redacted]

In support of the emotional hardship referenced, a psychological evaluation has been provided by [redacted] interviewed the applicant's spouse and children on August 30, 2008. [redacted] noted that the applicant's spouse is suffering from Major Depressive Disorder as a result of her husband's inadmissibility. Further, [redacted] stated that the applicant's children are suffering emotionally as a result of long-term separation from their father. [redacted] concluded that the applicant's spouse should consult her physician to consider antidepressant medication. *Psychological Evaluation from* [redacted] *Licensed Psychologist,* dated September 23, 2008. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and children and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's family or any history of treatment for the depression suffered by the applicant's spouse.

Moreover, with respect to the applicant's departure and his wife's need to work to provide for the family, no documentation has been provided on appeal establishing the applicant's and his spouse's income and expenses and assets and liabilities to establish that as a result of the applicant's physical absence, his wife is experiencing hardship. Alternatively, it has not been established that the applicant is unable to obtain gainful employment in India that would permit him to assist his wife and children financially in the United States. General articles about unemployment in India do not establish that the applicant specifically would be unable to obtain gainful employment abroad. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

In regards to relocating abroad to reside with the applicant due to his inadmissibility, the applicant's spouse first explains that her family, including her parents and siblings, reside in the United States or Canada and long-term separation from them would cause her hardship. In addition, the applicant's spouse contends that her child would not be able to obtain affordable and effective medical treatment for his conditions were he to relocate to India. *Letter from* [redacted] dated January 13, 2008. Counsel further contends that the applicant's spouse would be subject to discrimination in India as women do not have equal rights. *Supra* at 7.

Numerous letters have been provided from the applicant's spouse's family members outlining the close relationship they have with the applicant's spouse and children. In addition, the record establishes that the applicant's child, [redacted], suffers from moderate, persistent asthma and allergic rhinitis and requires daily medications and continued treatment. *See Letter from* [redacted] dated December 4, 2008. Moreover, documentation has been provided establishing the problematic health care conditions in India with respect to obtaining optimum treatment for asthma sufferers. The U.S. Department of State confirms that medical care in the major population centers approaches and occasionally meets Western standards, but adequate medical care is usually very limited or unavailable in rural areas. *Country Specific Information-India, U.S. Department of State,* dated July 28, 2011.

Based on the applicant's spouse's family ties in the United States and the applicant's child's medical condition and the need for him to receive continued treatment and care by medical professionals familiar with his diagnosis, the AAO concludes that based on a totality of the circumstances, the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Although the applicant has demonstrated that his wife would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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 from separation, we cannot find that refusal of admission would result in extreme hardship to his wife in this case.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.