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

U.S. Citizenship and Immigration Services

H6

[redacted]

FILE: [redacted] Office: LONDON, ENGLAND Date: JAN 04 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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, London, England. 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 the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated June 25, 2008.

On appeal, counsel asserts that the applicant's spouse lacks substantial ties in the United Kingdom. Counsel states that the applicant's spouse may be subject to discrimination and harassment in the United Kingdom as a practicing Muslim. Counsel contends that the applicant's spouse is suffering financial, mental and emotional hardships as a result of the applicant's inadmissibility.

The record contains, *inter alia*: a marriage certificate of the applicant and her husband, [redacted] indicating they were married on January 29, 2002; copies of the birth certificates of the couple's three U.S. citizen children; an affidavit and a letter from [redacted]; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for the United Kingdom and other background materials; an affidavit and a letter from the applicant; copies of tax returns, bank statements, and other financial documents; a psychological report for [redacted]; copies of medical records; letters from the couple's children; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
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> (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.
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> . . . .

> (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.

In this case, the record shows, and the applicant does not contest, that she entered the United States six times under the Visa Waiver Program, remained beyond her period of authorized stay, and was unlawfully present in the United States for a period of one year or more. She now seeks admission within ten years of her last departure in July 2006. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the applicant's husband, [redacted] states that he has experienced extreme emotional and financial hardship since his wife departed the United States. [redacted] states that he and his wife have three daughters, ages eight, ten, and eleven, and that he pays for all of his wife's and daughters'

expenses in England. He contends he barely has enough money left over to travel to England to see them. In addition, [redacted] states he feels depressed, constantly cries, and feels extremely anxious. He claims his wife has been experiencing sleeping problems, which also contributes to his emotional hardship. Moreover, [redacted] states he cannot move to England because his wife does not have a job or pay taxes and, therefore, cannot help him get a visa. [redacted] contends that if his daughters came to the United States without his wife, there would be no one to take care of them while he works. *Affidavit of* [redacted] dated September 25, 2008; *Letter from* [redacted] dated September 6, 2007.

An evaluation from a psychologist states that [redacted] has visited his wife and children in the United Kingdom five times in the last two years. According to the psychologist, being separated from his wife and children has caused [redacted] to become depressed and anxious. The psychologist states that "[h]is depression is rooted in the separation itself," and diagnosed [redacted] with adjustment disorder with mixed anxiety and depressed mood. *Psychological Evaluation from* [redacted], dated July 21, 2008.

An affidavit from the applicant states that she cannot work because being a mother to her three children is a full-time job. She states she has been having trouble sleeping due to stress and has been prescribed a sleep medication. She states she is feeling hopeless and that her family is falling apart. In addition, the applicant states that their daughter, [redacted] suffers from asthma. According to the applicant, [redacted] has been on oral steroids and uses an inhaler on a regular basis. The applicant contends [redacted] suffered an asthma attack in the United Kingdom, but had to wait five hours before being seen by a doctor in the hospital. Furthermore, the applicant contends she suffers from migraine headaches at least once a month. Moreover, the applicant claims she cannot sponsor her husband to live with her in the United Kingdom because she does not work or pay taxes. *Affidavit of* [redacted], dated September 24, 2008; *Letter from* [redacted] dated October 3, 2007.

After a careful review of the record, there is insufficient evidence to show that [redacted] has suffered or will suffer extreme hardship if his wife's waiver application were denied.

The AAO recognizes that [redacted] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. Federal courts and the Board of Immigration Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Regarding the financial hardship claim, the applicant contends she has not worked outside the home as she has been a full-time homemaker for her children who are currently ten, twelve, and fourteen years old. Therefore, there is no evidence the applicant has ever helped to financially support the family and, thus, the AAO is not in the position to attribute any financial hardship [redacted] may be experiencing to the applicant's departure. The AAO notes, however, that there is no allegation the applicant cannot work outside the home. The record contains copies of two employment authorization cards, indicating the applicant was authorized to work from April 28, 2004, until April 27, 2005, and again from May 15, 2005, until May 14, 2006. In addition, the record indicates the applicant has a high school diploma, has attended some college courses, and has completed a Teacher Assistant course. Although the applicant contends she suffers from migraine headaches, she does not contend that her migraines prevent her from working.

With respect to the emotional hardship claim, there is insufficient evidence to show that [redacted] hardship is any more difficult than would normally be expected under the circumstances. Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on a single interview the psychologist conducted with [redacted] on July 19, 2008. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. There is no evidence that there is a history of treatment for depression or anxiety for [redacted]. In addition, the psychologist contends that [redacted] depression and anxiety are related to being separated from his wife and children, but he does not comment on whether [redacted]'s mental health might improve if he relocated to the United Kingdom to be with his family. In sum, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

Furthermore, the record does not show that [redacted] would suffer extreme hardship if he were to move to the United Kingdom to be with his wife. The record shows that [redacted] is currently forty-five years old. He does not claim that he has any physical or mental health issues that would make his transition to moving to the United Kingdom any more difficult than would normally be expected under the circumstances. Although the record contains copies of medical records, including a discharge letter from a hospital, indicating the couple's daughter, [redacted], has asthma, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of her condition. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

Moreover, although the applicant and [redacted] contend that [redacted] cannot obtain a visa to live in the United Kingdom, there is no evidence in the record indicating he would be prohibited from entering the United Kingdom. In fact, according to the psychologist, [redacted] has visited his wife and children in the United Kingdom five times. There is no evidence that the couple has made any attempts to obtain an immigrant visa for [redacted] that have been unsuccessful. To the extent the record contains articles addressing anti-Muslim sentiment in England, neither the applicant nor her

husband claim to be Muslim or allege that they have any concerns related to these articles. Although counsel asserts [redacted] is a practicing Muslim, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States.

Finally, the AAO notes that even if the applicant had established the requisite extreme hardship to her spouse, she has failed to show that she merits a waiver of inadmissibility as a matter of discretion. As noted by the director, the record reflects that on June 30, 1994, the applicant's spouse married a U.S. citizen, [redacted]. On the basis of that marriage, he was granted lawful permanent residence as a conditional resident. The conditions on his residence were removed on June 11, 1997 based on his marriage to [redacted]. The applicant's spouse naturalized as a U.S. citizen on June 14, 2000. However, in a sworn statement dated June 3, 2008, the applicant admitted that she and her spouse established an ongoing romantic relationship in 1995 and had three children together between 1996 and 2000. The applicant testified that she had knowledge of her spouse's marriage to [redacted]. She stated that she and the applicant were "romantically involved" "every single day" from April 1996 until the time they resided together. The record now indicates that the applicant and her spouse were involved in a relationship akin in virtually every way to a marital relationship, and raises serious doubts as to whether her spouse's marriage to [redacted] was *bona fide*. We find the explanation that the relationship between the applicant and her spouse was merely an affair, and not a *de facto* marital relationship, to strain credulity. Consequently, we would not be inclined to exercise our discretion favorably even had we found extreme hardship.

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.