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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**

H5

Date: **OCT 21 2011** Office: **CHICAGO, ILLINOIS**

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); and 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, Chicago, Illinois, and 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 Canada who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting material facts in support of his application for admission to the United States as a permanent resident; and 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 and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the father of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and 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 child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 25, 2009.

On appeal, the applicant, through counsel, asserts that the denial of the I-601 waiver "was arbitrary, against the manifest weight of the evidence and not in accordance with the law." *Form I-290B*, filed July 24, 2009.

The record includes, but is not limited to, counsel's appeal brief; counsel's brief in support of the I-601; statements from the applicant's wife, mother-in-law, and sister-in-law; mental health documents for the applicant's wife; employment verification for the applicant; and mortgage documents, insurance documents, a bank statement, household and utility bills, and tax documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the

application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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.

....

(v) Waiver.-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 to the satisfaction of the [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 the present case, the record indicates that the applicant entered the United States in 1994 as a student. In 2000, the applicant's application for a change of status to a NAFTA professional was denied. The applicant filed a motion to reopen the denial, which was dismissed in 2000. On or about April 26, 2005, the applicant departed the United States. On an unknown date, the applicant entered the United States. In 2006, the applicant departed the United States. On March 6, 2006, the applicant entered the United States. On an unknown date, the applicant departed the United States. On July 7, 2007, the applicant entered the United States at Buffalo, New York. On July 30, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On an unknown date, the applicant departed the United States. On August 11, 2007, the applicant entered the United States at Buffalo, New York. On an unknown date, the applicant departed the United States. On September 10, 2007, the applicant entered the United States at Buffalo, New York.

On July 7, 2008, during the applicant's adjustment interview, he testified that his last entry to the United States occurred in February 2006 when he returned from the Bahamas. However, after reviewing the record, it was discovered that the applicant entered the United States on March 6, 2006; July 7, 2007; August 11, 2007; and September 10, 2007. The AAO finds that applicant's effort to

conceal his previous entries into the United States was a misrepresentation of a material fact made in an effort to procure permanent residence status. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

Additionally, the applicant accrued unlawful presence from 2000, when his application for change of status was denied, until April 26, 2005, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his 2007 departure from the United States. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of his departure.

Waivers of inadmissibility under section 212(a)(9)(B)(v) and section 212(i) of the Act are 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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 United States Citizenship and Immigration Service (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 of Immigration Appeals (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.

In counsel’s appeal brief filed August 31, 2009, counsel states that if the applicant’s wife joins the applicant in Canada, “[h]er employment opportunities would be significantly diminished” and they “would incur extreme financial loss.” In counsel’s brief in support of the I-601 filed October 2, 2008, counsel states the applicant’s wife worked as an elementary school teacher, and she would not be able to return to teaching if she moved to Canada. Counsel states the applicant earns \$100,000 a year, and “it is unlikely that he would be able to obtain similar employment at his current salary” in Canada. *See letter from [REDACTED]*, dated July 3, 2008. Counsel also states that the applicant and his wife would “suffer financially if they had to sell their home,” as they would take “a huge financial loss” because of the current real estate market. Counsel states the applicant’s wife’s family is very close. In a statement dated October 1, 2008, the applicant’s sister-in-law states she and the applicant’s wife “depend upon one another for help and support.” In a statement dated October 1, 2008, the applicant’s mother-in-law states the applicant’s wife “depends on [her] for...help and support” with her daughter. In a statement dated October 1, 2008, the applicant’s wife states her mother helps take care of her daughter, and she “become[s] extremely depressed when [she] think[s] of the possibility of raising [her] daughter in Canada.” The AAO notes the applicant’s wife’s concerns regarding the difficulties she would face in relocating to Canada.

Counsel states that if the applicant's wife joins the applicant in Canada, "[h]er personal health would be adversely impacted." The AAO notes that the applicant's wife was diagnosed with generalized anxiety disorder on or about September 25, 2008. *See letter from [REDACTED], [REDACTED], dated September 25, 2008.* Counsel claims that the applicant's wife "has suffered from anxiety disorders when separated from her family." Ms. [REDACTED] reports that when the applicant's wife was "separated from her family, she...experienced severe anxiety and symptoms of depression." Ms. [REDACTED] recommends that the applicant's wife not be separated from her husband or her family. Counsel states that the applicant's wife's "diagnosed medical condition" "goes above and beyond what most individuals deal with when families are separated." The applicant's wife states in her "late teenage years, [she] began suffering from depression and anxiety. [She] was unable to attend college out of state because of the anxiety that separation from [her] family would cause." On appeal, counsel has submitted medical records for psychiatric treatment of the applicant's spouse from [REDACTED], M.D., Ph.D. These include a letter from Dr. [REDACTED] stating that the applicant's spouse received treatment from February 7, 2005 until April 17, 2007, as well as several "M.D. Progress Notes" that contain handwritten notes. The AAO notes that not all of the handwritten notes are legible. These documents establish that the applicant's wife was treated for depression, anxiety, and ADHD from February 7, 2005 until April 17, 2007. *See letter from Dr. [REDACTED], dated July 11, 2009.* However, the submitted medical records from Dr. [REDACTED] that were legible, do not establish that the applicant's wife's mental health conditions were related to her separation from her family. Additionally, the severity of the applicant's spouse's condition is not clear from the doctor's notes. Further, there is no other documentary evidence in the record establishing that the applicant's wife's mental health conditions worsened when she was separated from her family. Going on record without supporting 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The AAO acknowledges that the applicant's wife is a citizen of the United States and that she may experience some hardship in joining the applicant in Canada. However, the AAO notes that the record does not contain documentary evidence that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States or that she could not obtain any employment in Canada. Additionally, the AAO notes that the record does not establish that the applicant's wife could not receive treatment for her mental health conditions in Canada or that she has to remain in the United States to receive treatment. The AAO acknowledges that the applicant's wife's family may suffer some hardship in being separated from her; however, the AAO notes that the applicant's wife's family are not qualifying relatives, and the applicant has not shown that hardship to his wife's family will elevate his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Canada.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. The applicant's sister-in-law states the applicant's wife's "mental condition has deteriorated," and she "is often very anxious and depressed." The applicant's wife states she "often

suffer[s] mood changes and anxiety attacks if [she] [is] separated from [the applicant] for more than a few days.” Counsel states the applicant’s wife “is currently undergoing counseling for her Generalized Anxiety Disorder.” As noted above, the record establishes that the applicant’s wife was diagnosed with generalized anxiety disorder. Counsel states that prior to meeting the applicant, the applicant’s wife “was treated by a psychiatrist. She was diagnosed as suffering from Generalized Anxiety Disorder and Major Depressive Disorder.” As noted above, the record establishes that the applicant’s wife was seen by Dr. [REDACTED] from February 7, 2005 to April 17, 2007. Based on the doctor’s notes, the applicant’s wife was diagnosed with depression, anxiety, and ADHD, and was prescribed Lexapro and Adderall. The AAO notes the applicant’s wife’s mental health concerns.

Counsel states the applicant’s wife is currently unemployed, and she depends on the applicant for support. The AAO notes that the record establishes that the applicant was employed by Chicago Mission in 2008 and earned \$100,000 annual salary. As noted above, counsel states it is unlikely that the applicant “would be able to obtain similar employment at his current salary” in Canada. The AAO notes the applicant’s wife’s financial concerns.

The AAO has carefully considered the mental health documents regarding the emotional difficulties experienced by the applicant’s wife. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardships upon separation from that which is typically faced by the relatives of those deemed inadmissible. Additionally, the AAO notes that the applicant’s wife may experience some financial hardship in being separated from the applicant; however, the applicant has not provided sufficient documentation to establish his wife’s financial situation. Further, the AAO notes that the applicant has submitted no evidence to establish that he would be unable to obtain employment in Canada and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he 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) and section 212(a)(6)(C)(i) 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.