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



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



tlc

DATE: **AUG 15 2011**

OFFICE:

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:



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,

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Perry Rhew
Chief, Administrative Appeals Office

The waiver application was denied by the Field Office Director, [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who entered the United States without admission or parole in May 2002 and departed the United States in September 2007. The applicant 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 ten years of his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and U.S. children.¹

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated February 25, 2009.

On appeal, counsel for the applicant asserts that the I-601 denial did not address the applicant's spouse's letter detailing the hardship factors. He further claims that the applicant's spouse will be living under the poverty level after the birth of her second child.

In support of the waiver application and appeal, counsel submitted letters, medical documents, financial documents, identity documents, and a document written in Spanish, with no accompanying translation². The entire record was reviewed and considered in rendering a decision on the appeal.

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

¹ There are documents reflecting that applicant's spouse was pregnant with a second child at the time the appeal was filed. The projected due date was October 7, 2009.

² According to 8 C.F.R. § 103.2(b)(3), "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

(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.

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 qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor 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(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a thirty-three-year-old native and citizen of [REDACTED] who resided in the United States from May 2002, after entering without admission or parole, to September 2007, when he returned to [REDACTED]. The applicant's wife is a thirty-three-year-old native of [REDACTED] and citizen of the United States. The applicant is currently residing in [REDACTED] and the applicant's spouse is residing in [REDACTED] with their child.

The applicant's spouse claims that she is suffering extreme financial hardship because she is unable to afford an apartment of her own, a large portion of their savings was used to cover immigration costs and stays in [REDACTED] and she was anticipating the financial burden of a second child. *See Letter from [REDACTED]* dated March 17, 2009. The applicant's spouse currently lives in the house owned by her parents. It is noted that this is the same house where the applicant lived with his wife from September 2002 until the date of his departure in September 2007. *See Letter from [REDACTED]* dated March 17, 2009; *Letter from [REDACTED]* dated September 8, 2007. There is no evidence that the applicant's spouse ever resided in an apartment of her own. There is no documentation detailing the applicant's wages during his residency in the United States. Further, there is no indication as to whether the applicant is working in [REDACTED] and the extent of his financial obligations, though it is noted that the applicant is living with his parents. *See Letter from [REDACTED]* dated September 13, 2007. 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)). In addition, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In her most recent letter, the applicant's spouse states that she no longer receives help from her husband in caring for her daughter and she cannot count on his assistance if she becomes sick herself. See Letter from [REDACTED], dated March 17, 2009. There is no documentation indicating who looks after the applicant's spouse's children while she works. It is noted that the applicant's spouse generally works only in the months June to December and collects unemployment for the remainder of the year. See Letter from [REDACTED] dated September 13, 2007. Further, the applicant's spouse's medical background consists of infertility treatments that resulted in a pregnancy, urinary tract infections, and a left kidney that is smaller than her right. See Letter from [REDACTED] MD, dated February 9, 2009; *Diagnostic Imaging Report*, dated January 19, 2004. It is noted that the applicant's spouse is susceptible to frequent urinary tract infections, but there is no indication that the treatment for these infections requires the presence of the applicant. The AAO acknowledges that separation from a spouse nearly always creates a level of hardship for both parties. However, there is not sufficient evidence on the record to establish that the applicant's spouse is experiencing hardship beyond the common results of removal or inadmissibility as a result of her medical conditions.

The applicant's spouse claims that if she moved to [REDACTED] she would not receive care for her medical issues and she would worry about affording medical care. She also claims that she cannot relocate because she and the applicant do not own property in [REDACTED] her immediate family lives in the United States, and she would not be able to find work in [REDACTED]. See Letter from [REDACTED], dated September 13, 2007. Finally, the applicant's spouse states that the educational opportunities for her and her daughter would be limited in [REDACTED]. First, the applicant's spouse acknowledges that she has previously suffered from infections in [REDACTED] received treatment, and recovered. *Id.* There is no indication that the applicant's spouse would not be able to receive similar successful treatment in the future. It is further noted that there has been no supporting evidence submitted concerning country conditions in [REDACTED] including the area where the applicant currently resides. The applicant's spouse also asserts that she would not be able to find a job in [REDACTED] but does not submit supporting evidence for this claim. See Letter from [REDACTED] dated September 13, 2007. Further, there is no evidence that the applicant's spouse and her husband own property in the United States; in fact, as previously noted, she and the applicant lived with her parents for five years, up to the applicant's departure to [REDACTED].

The applicant states that her parents and immediate family now live in the United States, but there is no evidence concerning which of her relatives still live in [REDACTED] and the nature of her relationships with them. Further, there has been no supporting evidence submitted concerning the educational opportunities in [REDACTED] and the AAO notes that changes in educational or employment opportunities are typical of the hardships associated with relocation. It is further

noted that, based on the evidence, the applicant's spouse is a native of [REDACTED] who recently lived in [REDACTED] with the applicant from December 2008 to March 2009. The record is insufficient to establish that the applicant's spouse's hardship upon relocation to [REDACTED] rises to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 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. 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.