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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**



HG

DATE: **AUG 19 2011** Office: [REDACTED]

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of [REDACTED]. He 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen and has two U.S. citizen children. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 13, 2009.

On appeal, the applicant's spouse states that she desires to have her husband and children's father receive permission to return to the United States to be with his family. *Form I-290B*, received on February 5, 2009.

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-

....

(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.

....

The record indicates that the applicant entered the United States without inspection in February 1992 and remained until he departed voluntarily in October 2007. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until October 2007, and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

The record includes, but is not limited to, statements from the applicant's spouse; a statement from the applicant; statements from family members of the applicant and his spouse; a statement from [REDACTED] Elementary School Teacher, undated; photographs of the applicant and his

children; a psychological exam of the applicant's spouse by [REDACTED] Ph.D.; and documents filed in relation to the applicant's Form I-130.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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.

On appeal the applicant’s spouse states that she is experience emotional, physical and financial hardship due to the applicant’s inadmissibility. She explains that the area in [REDACTED] where the applicant resides is unsafe and that she fears for the applicant’s safety. *Statement of the Applicant’s spouse*, received May 23, 2011.

The applicant has submitted a statement asserting that the conditions in [REDACTED] are unfit for children and dangerous for adults. *Statement of the Applicant*, received May 2, 2011.

As noted above, children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant as it impacts the qualifying relative. The AAO sympathizes with the concerns for the safety of the applicant and children. While the AAO notes that the State Department has issued a travel warning for certain areas of [REDACTED] there is no evidence that the applicant or his spouse and children would reside in one of the areas listed in the travel warning. 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)). Without further evidence to establish that the conditions in certain areas of [REDACTED] will specifically impact the applicant's spouse or children the AAO does not find the record to establish that they would experience uncommon hardships upon relocation, even when the impacts are considered in aggregate.

On appeal the applicant's spouse has submitted a statement explaining that she is struggling physically to care for her two children as well as her elderly grandfather. *Statement of the Applicant's Spouse*, received May 23, 2011. She explains that her grandfather is legally blind, lives alone and requires significant assistance in his daily activities which she provides. She states that if the applicant were present he would be able to assist her with caring for their own children so that she could care for her grandfather and further her education.

The record includes a letter from the applicant's spouse's grandfather explaining that he has medical conditions, that his granddaughter provides assistance to him and that the applicant's spouse and children are suffering due to the applicant's inadmissibility. However, there are no medical records or other documentation establishing that the applicant's spouse's grandfather suffers from medical condition or to what degree he requires assistance with his daily activities. There are no financial records or other documentation which corroborate that the applicant's spouse is providing financial or physical assistance to her grandfather, and the applicant's spouse fails to explain why other family members, such as her father or mother, are unable to provide assistance for her grandfather. The AAO notes that the applicant's spouse's mother submitted a statement in which she says that she provides care for her father, the applicant's grandfather. Based on these observations the record does not contain sufficient evidence to establish that the applicant's spouse is experiencing an uncommon physical impact due to any care she provides for her grandfather. While the AAO can accept that the applicant's spouse is the primary care giver for her two children, there is no evidence which indicates that she is experiencing any impacts which are not typically experienced by the relatives of inadmissible aliens who remain in the United States.

The applicant's spouse asserts that she is suffering from depression and anxiety due to the applicant's absence, and that her children are suffering by not having a father figure in the home. She also states that because she has to work full time, care for her children and care for her grandfather that she is unable to continue her education and career development. *Statement of the Applicant's Spouse*. The record contains a psychological assessment of the applicant's spouse from Dr. [REDACTED] diagnosing the applicant's spouse with Major Depressive Disorder and discussing the emotional impacts on the applicant's children. The record also contains statements from family members of the applicant which describe the emotional and physical impacts on the applicant's spouse due to the applicant's inadmissibility. The AAO will give due consideration to Dr. [REDACTED] conclusion and the emotional impact noted by family members.

The record also contains a statement from a teacher of the applicant's young son which discusses the potential impacts of not having a father in the home and specifically the behavioral impacts on the applicant's son including sadness, undeveloped social skills and isolation from peers. The AAO

acknowledges that the applicant's children may experience some emotional hardship as a result of separation from the applicant. However, the record does not contain sufficient documentation to show that any impact on the applicant's children rises to such a degree that it creates an uncommon hardship impact on the applicant's spouse.

The applicant's spouse also asserts that she is struggling financially, that she fears losing her house to foreclosure and struggles to support her family financially. Although the applicant's spouse has explained that she is struggling financially, the record does not contain any documentation which corroborates her assertions. There is no breakdown of monthly financial obligations, copies of bills, tax returns or other documents showing earnings, or any evidence that the applicant's spouse has accrued significant debt or in jeopardy of losing her home. There is no evidence that the applicant provided any income to the household while he resided in the United States, thus the economic impact of his absence is not clear. Without evidence to support these assertions the AAO cannot determine that the applicant's spouse will experience any uncommon financial impact due to the applicant's inadmissibility.

The AAO acknowledges that the applicant's spouse will experience some emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. As the applicant has failed to establish extreme hardship to a qualifying relative, no purpose would be served in determining whether he warrants 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 rests 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.