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



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

[REDACTED]

tlc

FILE: [REDACTED]

Office: CHICAGO, ILLINOIS

JAN 21 2011

IN RE: Applicant: [REDACTED]

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

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 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 application was denied by the District Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who is 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 and seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director*, dated April 15, 2008.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) failed to consider the extreme hardship the applicant's qualifying relative would encounter should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from the applicant; statements from family members; a statement from the applicant's child's teacher; published country conditions reports; medical records for the applicant's child; school records for the applicant's child; and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that the applicant was admitted to the United States on March 24, 2001 as a B-2 visitor with authorization to remain until September 23, 2001. *Form I-94, Departure Card*. The applicant's period of authorized stay was extended from September 23, 2001 until March 23, 2002. *Approval Notice, Form I-539 Application to Extend/Change Nonimmigrant Status; Form I-94, Departure Card*. The applicant remained in the United States and on March 16, 2005 filed a Form I-485 application to adjust her status to lawful permanent resident. *Form I-485, Application to*

Register Permanent Resident or Adjust Status. On November 30, 2005 the applicant was granted an authorization for parole. *Form I-512L, Authorization for Parole of an Alien into the United States*. She departed the United States and attempted to return on January 31, 2006 under her order of advance parole. *Form I-877, Record of Sworn Statement in Administrative Proceedings*. Immigration authorities referred her to secondary inspection where it was determined that the applicant had accrued more than 365 days of unlawful presence. *Id.* When given the option of withdrawing her application or having her case heard by an immigration judge, the applicant chose to have her case heard before an immigration judge.¹ *Id.* On February 9, 2006, the applicant was paroled into the United States until January 30, 2007. *Form I-512L, Authorization for Parole of an Alien into the United States*. The applicant, therefore, accrued unlawful presence from March 24, 2002, the day after her authorized stay expired, until March 16, 2005, the date she filed the Form I-485 application. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (now Secretary) as an authorized period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See United States Citizenship and Immigration Services Consolidated Guidance on Unlawful Presence*, at 33, dated May 6, 2009. In applying for an immigrant visa, the applicant is seeking admission within ten years of her 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.

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 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-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

¹ The AAO notes the record does not include any documentation regarding the applicant having a case before an immigration judge.

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.

If the applicant's spouse joins the applicant in Pakistan, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Pakistan. *Naturalization Certificate*. His parents reside in Pakistan. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse fears that Pakistan is unsafe and notes that the country is in a state of emergency. *Statement from the applicant's spouse*, dated December 11, 2007. Published country conditions reports included in the record document human rights abuses occurring in Pakistan. *Pakistan: End Emergency Rule and Restore Constitution, Human Rights Watch, <http://hrw.org/english/docs/2007/11/04/pakist17241.txt.htm>*, dated April 11, 2007. The AAO notes that the United States Department of State has issued a Travel Warning for Pakistan regarding the risks United States citizens take when traveling to Pakistan. *Travel Warning, Pakistan, United States Department of State*, dated July 22, 2010. The applicant's spouse also notes that when his child visited Pakistan from December 2005 to January 2006, she became very ill due to the air pollution. *Statement from the applicant's spouse*, dated December 11, 2007. Medical documentation included in the record show that when the applicant's child visited Pakistan in December 2005, she developed allergic rhinitis, bronchial asthma, and a respiratory tract infection which was caused by environmental changes. *Statement from [REDACTED]*, dated December 20, 2007. The applicant's child lost 5 kilograms of weight and was given treatment in Pakistan. *Statement from [REDACTED] Madni Poly Clinic, Pakistan, undated; Medical prescriptions for the applicant's child*, dated December 14, 2005, December 22, 2005, and January 2, 2006. Although the applicant's child is not a qualifying relative for the purposes of this case, the AAO acknowledges the difficulties of caring for a sick child, particularly in a foreign environment, and the resulting emotional hardship to the applicant's spouse. When looking at the aforementioned factors, particularly the lack of safety for United States citizens in Pakistan as documented by the published country conditions reports and Travel Warning issued by the United States Department of State, and the difficulties placed upon the applicant's spouse in caring for a sick child in a foreign environment, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Pakistan.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Pakistan. *Naturalization Certificate*. The applicant's spouse does not have any family members in the United States. *Statement from the applicant's spouse*, dated June 8, 2008. The applicant's spouse states that his family's household needs have called for him and the applicant to get jobs and work in order to maintain their family's living requirements. *Statement from the applicant's spouse*, dated December 11, 2007. He states that the applicant has become a great financial, emotional, and physical support system for his family. *Id.* He and their child depend upon the applicant for their daily needs, such as home care and maintenance, working a job, organizing the family's needs, helping to prioritize their bills, and financial budgeting. *Id.* He notes that he would not be able to earn enough money to pay for childcare. *Statement from the applicant's spouse*, dated June 8, 2008. While the AAO acknowledges these statements and observes that the record includes tax statements for the applicant's spouse showing an adjusted gross income of \$4,144.00 in 2002, \$11,236.00 in 2003, and \$18,615.00 in 2004 (*See tax statements*), it notes that the record fails to include documentation of the various expenses of the applicant's spouse, such as mortgage/rent statements,

credit card bills, and utility bills. The record also fails to document the applicant's husband's more recent employment history or income or any expenses associated with childcare. Counsel asserts that the applicant and her spouse pay \$1050.00 a month in rent, owe over \$15,000.00 in credit card debt and owe \$16,000.00 in the form of a car loan. *Attorney's brief*. While the AAO acknowledges counsel's statements, it notes that the record fails to include any documentation to support such assertion. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

The applicant's spouse states that being faced with the possibility of breaking up his family is truly the most painful and heartbreaking thing for him. *Statement from the applicant's spouse*, dated December 11, 2007. While the AAO acknowledges the statements from the applicant's spouse concerning the potential effects of separation from the applicant, it also observes that the record does not include any documentation regarding any physical or psychological condition of the applicant's spouse, such as a statement from a licensed healthcare or mental health professional. The AAO notes that the applicant's child developed respiratory conditions in Pakistan, but there is no evidence on the record to support the assertions that the applicant's spouse would be unable to care for their child if she remained in the United States, and it further appears from the record that their child did not suffer from these or any other significant medical conditions in the United States. *See Statement from [REDACTED]*, dated December 20, 2007. While the AAO acknowledges the Travel Warning for Pakistan issued by the United States Department of State (*See Travel Warning, Pakistan, United States Department of State*, dated July 22, 2010), it notes that the applicant's spouse makes no claim regarding the difficulties he would have regarding his visitation of the applicant in Pakistan. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to remain in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he remains in the United States, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.