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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: ACCRA, GHANA

Date: JAN 24 2011

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, 8 U.S.C. § 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 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, [REDACTED] 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 Cameroon who 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 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and 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(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 United States citizen spouse and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 17, 2008.

On appeal, the applicant requests reconsideration and states that his family experiences extreme hardship as a result of separation. The applicant submits a statement describing the hardship claimed and additional documents. *See Form I-290B and attachments.*

The record includes letters from the applicant's spouse detailing the hardship claim, a statement from the applicant, letters from the applicant's spouse's parents, the applicant's spouse's sister, and a medical doctor. *See letters, in email form, from [REDACTED] dated May 28, 2008, May 29, 2008, June 12, 2008, June 19, 2008, and June 20, 2008, respectively; an undated letter from [REDACTED], the applicant's spouse submitted with the Form I-601 application, and a letter dated November 23, 2009, from [REDACTED] letters from [REDACTED]; a letter from [REDACTED]; a medical letter from Dr. [REDACTED] dated June 17, 2008; and, a statement from [REDACTED] dated June 17, 2008.* The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States, without inspection, on November 25, 2002. The applicant married his U.S. citizen spouse on December 23, 2005. On March 19, 2006, the applicant filed a Form I-130, petition for Alien Relative, on the applicant's behalf. Simultaneously with the Form I-130 the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 10, 2006, the Form I-485 application was denied. On September 19, 2006, the Form I-130 petition was approved. On December 1, 2006, the applicant departed the United States. The applicant filed a Form I-601, dated January 14, 2008. On July 17, 2008, the Field Office Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

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 applicant accrued unlawful presence from November 25, 2002, the date he entered the United States without inspection, through March 19, 2006, the filing date of the Form I-485; and, again from August 10, 2006, the date his I-485 application was denied, to December 1, 2006, the date he departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his December 1, 2006 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 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 [REDACTED]* 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 [REDACTED] and [REDACTED]*, 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 [REDACTED]*, 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. [REDACTED]*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. [REDACTED] 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 [REDACTED] 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.

Regarding hardship in the United States, the applicant’s spouse states that she suffers from a neck and back condition and it is difficult for her to care for her infant child without the applicant. In her email letters, the applicant’s spouse describes situations where she loses sleep because the child stays up late and she has to care for her. It is noted, however, that these difficulties the applicant’s spouse describes are not atypical of parents with infants.

The applicant's spouse states, in her letter submitted with the Form I-601, that the family needs the financial support of the applicant. She states that she cannot work and take care of her 3-month old infant child. She states that her husband incurred student loans and needs work to pay creditors but he will not earn enough as a registered nurse in Cameroon. The applicant states that his wife is unable to work and care for their infant child alone because she suffers from a neck and back condition.

confirms that the applicant's spouse has a "history and episodic flare ups" of neck and back problems, and "advocate[s] that she [has] help at home when these flare ups occur." states "there have been occasions that [the applicant's spouse] has not been able to go to work and do her job of repetitive lifting and caring for people." However, there is no indication in the record of the frequency and duration of the "flare ups." The applicant's spouse's parents state that the applicant's spouse needs help with her finances and with caring for her child but they do not provide details of the hardships the applicant's spouse faces. Therefore, the AAO is unable to assess the impact of the medical condition on the applicant's ability to care for their child, the extent of assistance, if any, she would need, and the effects on her earnings as a result of the medical condition.

The applicant states he cannot help his family financially from Cameroon because he is unable to obtain comparable employment as a registered nurse in Cameroon as potential employers there are unwilling to train him, and compensation rates are low there. It is noted that in her June 23, 2009 letter, the applicant's spouse states that the family moved to Australia where the applicant is employed as a registered nurse. There is no indication from her November 23, 2009 letter that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Also, the applicant does not provide evidence of the family's income and expenses. The applicant indicates that his wife is unable to work, but he does not specify the household bills for their home in the United States, and the expenses he will incur to maintain a separate household in Cameroon. Without details of the family's expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the family will face.

The applicant's spouse states that it is emotionally difficult for her to care for their infant child alone. She states that sometimes she cannot sleep because she has to stay up during the night caring for the child who sometimes cries because she misses her father. While the applicant's spouse may experience hardship as a result of separation, the applicant has not submitted evidence to establish that these hardships are beyond that which would be expected of parents caring for infant children alone.

Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

The AAO finds, therefore, that the applicant has failed to establish extreme hardship to his U.S. citizen spouse in the United States as a consequence of his inadmissibility.

In his statement accompanying the appeal, the applicant states he cannot provide financially for his family from Cameroon because he cannot obtain comparably remunerative employment there. As noted above, however, the applicant does not provide details of the family's finances to allow an assessment of any financial hardship the applicant's spouse would endure in Cameroon.

The applicant states that his wife could not stay in Cameroon with their infant child because of the lower medical care standards there and she had to return to the United States with the child. As also discussed above, the record indicates that the applicant, his spouse, and their child have since moved to Australia where he is employed as a professional nurse and there is no indication that the applicant's spouse and the family are experiencing any financial or health-related hardships in Australia.

In her June 23, 2009 letter, the applicant's spouse states that while she is in Australia, where she is with the applicant who is employed there as a registered nurse, she misses her family and friends in the United States, and "when her husband goes to work [she] spend time crying." While the absence of family and friends may result in some hardship, it has not been demonstrated that these hardships are beyond that which would be experienced by families who relocate overseas.

The AAO finds, therefore, that the applicant has failed to establish hardship to his United States citizen spouse who has joined him overseas.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, 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) 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.