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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

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Date: Office: CHARLOTTE, NC FILE: [REDACTED]

IN RE: JUL 22 2011 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:

[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, Charlotte, North Carolina, 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 India 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.

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 January 7, 2009.

On appeal, counsel for the applicant asserts that the applicant has established extreme hardship will result to his United States citizen spouse. Counsel states that the director failed to consider all the hardship factors and failed to consider them in the aggregate. *See Form I-290, dated February 5, 2009.*

The record includes, but is not limited to, a statement from the applicant's spouse describing the hardship claimed; a statement from the applicant; various documents, submitted with the Form I-601, pertaining to the applicant's spouse's enrollment in a veterinary science program at Ross University in the Caribbean; a statement from the applicant's mother and father-in-law; a statement from the Social Security Administration regarding the applicant's brother-in-law's disability; documentation relating to the applicant's spouse's financial obligations; and counsel's brief. 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 on September 3, 1999, as a C-1/D crewman. On May 1, 2005, the applicant married his United States citizen wife. On September 29, 2006, the applicant's spouse filed a Form I-130 Petition for Alien Relative on behalf of the applicant and the applicant simultaneously filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was approved on September 25, 2007. The applicant subsequently departed the United States pursuant to a grant of advance parole on January 9, 2007, and returned to the United States on May 19, 2007.

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 over a year unlawful presence from September 4, 1999, the day after his C-1/D visa expired, until September 29, 2006, when he filed his Form I-485 application. The applicant's inadmissibility under the unlawful presence provisions was triggered when he departed the United States under advance parole. In that the applicant accrued more than one year of unlawful presence in the United States and is seeking admission within ten years of his 2007 departure, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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 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).

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.

According to the applicant, during his adjustment interview on March 6, 2007, the interviewing officer advised that he could travel outside the United States pursuant to his Advance Parole Authorization, but he did not realize the impact that leaving the United States would have on his adjustment. The AAO notes, however, that the Form I-512L, Authorization for Parole of an Alien into the United States, issued to the applicant on December 29, 2006, specifically warns of the consequences of having accrued unlawful presence after April 1, 1997.

Counsel asserts that a decision in this case should take into consideration that the applicant is eligible for adjustment under section 245(i) of the Act and has paid a \$1,000.00 penalty fee, therefore, no purpose would be served in imposing a 10-year bar to admissibility. Counsel also asserts that "[the applicant's] departure from the United States solely to visit [his] spouse who is attending school comports with basic American values furthering marriages, families, and self-advancement through education that tilt the scale heavily in the discretion of a favorable application of discretion." However, while unlawful presence may

be given less weight in the discretionary finding, the AAO finds nothing in the statute, case law or regulations, to support a different standard in determining admissibility in this case.

In her statement, dated October 12, 2007 and submitted with her Form I-601 application, the applicant's spouse states that she would suffer financial and emotional hardship as a result of separation. She states that she depends on the applicant for emotional and financial support and his "inadmissibility will result in detrimental consequences such as extreme personal duress, financial instability, religious ostracism, loss of educational opportunity, et al;" and she will be "faced with 2 finite possibilities: discontinue [her] education and/or move to India." The applicant's spouse states that she is pursuing rigorous studies in Veterinary Medicine at Ross University in the Caribbean, and the applicant's inadmissibility "will no doubt lead to [her] inability to complete this program." She states that she "[does] not feel that [she] can continue to handle the stress of this program alongside [her] personal life if a bar is placed upon [her] husband. [That she] would not be able to devote to study the large amounts of time needed to prevent any failing grades." Counsel states that the applicant and his spouse are emotionally attached and have "great ambitions for future life and career."

The applicant's claim of hardship she would suffer as a result of separation is based in part on her need to complete her veterinary medicine studies at Ross University in the Caribbean, a program which she states requires her attendance there and devotion to her studies. It is noted, however, that since making her statement the applicant's spouse has successfully completed the veterinary medicine program at Ross University and is practicing veterinary medicine in Ohio.

The applicant's spouse also states that while she is studying in the Caribbean her husband is needed to assist her parents in caring for her mentally-ill older brother in Ohio. An October 14, 2007, letter from the applicant's spouse's parents states that they "appreciate the effort [applicant] puts into spending time with [their] mentally-ill son..." and "This time allows [them] a short reprieve and time to take care of other tasks." A letter, dated September 26, 2002, from the Social Security Administration indicates that the applicant's brother had been determined to have a severe disability. It is noted, however, that the applicant's spouse's parents are not qualifying relatives for purposes of a section 212(a)(9)(B)(v) waiver. Since the applicant's spouse is now back in Ohio, it is not clear whether the applicant is still needed to help her parents care for her disabled brother.

The AAO notes that separation would result in some emotional hardship to the applicant's spouse. However, in the absence of medical or psychological documentation, the AAO cannot determine the extent of the hardship the applicant's spouse would suffer.

The applicant's spouse also states that she needs the applicant's financial support while she pursues her studies because if she fails to complete her veterinary medicine studies she will return to the United States saddled with tuition debts and she will not be able to assist her sister in obtaining a college education. Counsel points to the large amount of debt from education loans the applicant's spouse would have accumulated by the time she finishes her veterinary medicine studies. It is noted that the record of evidence includes an American Education Services statement which indicates that as of February 13, 2006, the applicant's spouse had a student loan in the amount of \$44,743.40; and Ross University statements indicate a total financial aid package of \$44,848.00 for the 2006-2007 aid year, and \$71,010.00 for the 2007-2008 aid year. However, since the applicant's spouse is now employed as

a Veterinarian, the AAO is unable to determine her financial situation and, therefore, cannot assess the nature and extent of financial hardship, if any, she would experience.

After considering the hardships in the aggregate, the AAO finds that the applicant has failed to establish that his U.S. citizen spouse will suffer hardship in the United States beyond what would normally be experienced as a result of separation.

The applicant's spouse states that she will suffer hardship in India if she relocates there with the applicant. She states that she does not have family in India and she will be isolated there; that she will be "completely dependent on her husband because of "[her] lack of social competency, language barriers, inherent introverted personality, and no job skills;" and she fears "raising bi-racial children within a culture proud of full-bloodedness;" she will be ostracized as a black woman who is married to an Indian man; she will suffer religious and societal discrimination in India as a Baptist who is married to a Catholic; that "[she] is not sure [she] will be able to acquire licensure to practice in Asia" because diseases and domestic animals "are different" in India, and 'the ideas of pets' are different." However, the applicant does not provide evidence to support these claims, and she does not indicate the extent to which her professional skills would be transferrable in India. Also, the record does not include documentation, such as relevant country reports, to support these claims. 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)).

It is noted that the applicant's spouse would suffer some hardship in India because she does not have family there. However, even when considered in the aggregate, the AAO finds that the applicant has failed to establish that his U.S. citizen spouse will suffer extreme hardship in India if she relocates to India as a result of the applicant's inadmissibility.

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)(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.