

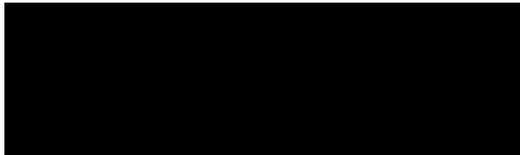
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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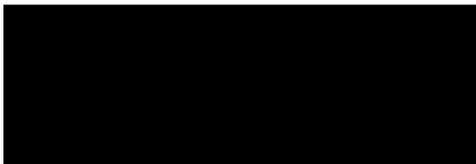
DATE: JUN 28 2011 Office: BANGKOK, THAILAND

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 45-year-old 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 ten years of his last departure from the United States. The applicant is married to a United States citizen (USC) and 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 USC spouse and child.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the District Director*, dated September 30, 2008.

On appeal, counsel asserts that the director did not properly take into consideration the extreme hardship that the applicant's spouse would suffer. *See Form I-290B*, dated October 28, 2008, and the accompanying brief in support of the appeal, dated November 25, 2008.

The record includes medical documentation for the applicant's spouse and son, tax and other financial documents and documents related to country conditions in India. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) 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.

....

(v) Waiver

The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

In the present case, the record reflects that on April 23, 1996, the applicant was admitted into the United States as a C-1 crewman with authorization to remain in the United States until April 26, 1996. The record reflects that on October 6, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), which was denied on May 25, 2000. The applicant was placed in removal proceedings and on May 24, 2001, he was ordered removed *in absentia* by an immigration judge. The applicant filed a Motion to Reopen and a Request for a Stay of Removal, which were denied by the immigration judge. The applicant appealed the decision to the Board of Immigration Appeals (BIA) and on September 12, 2006, the BIA dismissed the appeal. On September 12, 2006, the applicant was removed from the United States to India. On May 15, 2006, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on his behalf, which was approved on September 12, 2006. On April 11, 2008, the applicant filed a Form I-601 waiver and an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). On September 30, 2008, the district director denied the Form I-212 and the Form I-601, finding that the applicant failed to establish extreme hardship to a qualifying relative. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provision under the Act until October 6, 1997, the date he filed the Form I-485, and again from May 25, 2000, the date the Form I-485 was denied, until his removal from the United States to India on September 12, 2006. The applicant's unlawful presence of more than one year and removal from the United States on September 12, 2006, triggered the ten-year bar under section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 child 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.

In this case, the record reflects that the applicant's spouse, [REDACTED] is a 38-year-old native of India and citizen of the United States. The applicant and his spouse were married in [REDACTED] on February 23, 2006, and they have one child. The record reflects that the applicant's child is currently residing with the applicant in India.

The applicant's spouse states that separation from her family has caused her emotional distress and financial hardship. Regarding the emotional and financial hardship of separation, the applicant's spouse states that she used to own a business with the applicant, however, after the applicant was removed to India, "I had to sell my business that I used to own since I could not manage it without my husband," that the sale of her business resulted in the loss of the family's primary source of livelihood.

The applicant's spouse states that because of financial hardship, she cannot afford to support herself and her son in the United States, so she had to leave her son in India with the applicant. The applicant's spouse states that she has vertigo problems because she is mentally depressed and cannot afford to get needed medical treatment due to financial hardship, and that she cannot afford to rent a place on her own and is currently living with some friends. The applicant's spouse states, "my husband's removal, the closure of our business and the separation from my family has caused undue stress and depression for my family and myself. My son needs my care and affection, without being together it won't be possible, as he is still young, his father cannot manage him all by himself. I feel like I have abandoned my family and feel helpless." The applicant's spouse also states that her marriage is undergoing a lot of problems because of separation, that her life has been disrupted and that she needs her family present in the United States with her to ensure that they all have a wonderful future together. *See Notarized Letter from [REDACTED]* dated November 16, 2008. The applicant's spouse further states that her situation has gotten worse since the director denied the applicant's waiver request and that all she does now is cry all the time because of the possibility that the applicant may not return to the United States. *Id.*

The AAO acknowledges that separation from the applicant may have caused some challenges for his spouse, however, it does not find the evidence in the record is sufficient to demonstrate that the challenges the applicant's spouse faces meet the extreme hardship standard. While the applicant's spouse claims financial hardship due to family separation, the record does not contain information on the family's current income and expenses. The financial documents in the record refer to the applicant's spouse's income in 2004. There is no information on the applicant's income while he was residing in the United States. There is no evidence that the applicant had made financial contributions to the family while he was residing in the United States and the amount of any contribution. Without such documentation, the AAO cannot determine the level of financial hardship to the applicant's spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). The record includes a letter from [REDACTED], psychiatrist, [REDACTED], dated June 6, 2006. The letter from [REDACTED] states that he is treating the applicant's spouse for major depression. This letter, which was written more than two years before the appeal was filed is vague and therefore not given much evidentiary weight. The record also contains a letter from [REDACTED] from India, dated January 18, 2008, stating that he examined the applicant's spouse on May 10, 2006 in India, that she was diagnosed with vertigo of ischemic origin and that she was treated with medication from May 10, 2006 to February 2, 2007. The record does not contain more recent documentation of the applicant's spouse's medical conditions. Without a more current documentation, the AAO is unable to determine her current medical situation. Additionally, neither the applicant's spouse nor counsel claimed that the applicant's spouse has been diagnosed with major depression. Finally, hardships faced by the applicant's child as a result of family separation are not considered in the extreme hardship analysis, except to the extent that it impacts the applicant's spouse. In this case, the applicant's spouse states that her son is having a lot of health problems because he is in India with the applicant, however, there is no evidence in the record to show that the applicant's son has health problems that have caused extreme hardship to the applicant's spouse. Thus, the AAO finds that the applicant has failed to establish extreme hardship to his spouse due to family separation and his inadmissibility.

The applicant's spouse states that she does not want to relocate to India because she and her family would suffer extreme financial hardship. The applicant's spouse states that India is a very poor country and that she would not be able to obtain a job in India because of her gender and age. The applicant's spouse states that only young people are being hired by companies and other establishments, that the maximum age for a government job is 35 years and since she and the applicant are over 35 years, they will not be able to obtain employment in India. The applicant's spouse also states that they do not have the financial means to establish a business in India. The applicant's spouse further states that she had moved to India with the applicant in 2006, following his deportation from the United States, and that she had to return to the United States because of the severe financial difficulties they had in India. See *Notarized Letter from [REDACTED]*, dated November 16, 2008. In addition, the applicant's spouse states that she has lived in the United States for more than ten years and would endure a lot of hardship and discrimination because of her gender if she were to move back to India. *Id.* Counsel asserts that it will be nearly impossible for the applicant and his spouse to secure employment in India because they both exceed the age at which most individuals in India are employed, and that if the applicant's spouse were to relocate to India, the family would be living in severe poverty with no opportunity for a good education and a financially secure future. See *Counsel's Brief in Support of the Appeal*, dated November 25, 2008.

The AAO acknowledges that the applicant's spouse is a United States citizen and has resided in the United States for some time, however, the record does not reflect that she has family ties in the United States that will be impacted upon her relocation to India. The AAO notes that country condition information in the record indicates that there is discrimination in India on the basis of gender, which may affect the applicant's spouse, however, there is nothing in the record to support the contention that the applicant's spouse is unable to find a job and support his family in India because of his age. There is no evidence in the record showing the applicant's living conditions in India, or otherwise demonstrating the conditions the applicant's spouse is likely to face if she moves there. Additionally, other than the statements from the applicant's spouse and counsel, there is no evidence of medical, financial or other types of hardship the applicant's spouse would face upon relocation to India. Therefore, the AAO finds that the applicant has failed to establish that his spouse would suffer extreme hardship upon relocation to India.

In sum, although the applicant's spouse claims hardship based on family separation, the record does not support a finding that the difficulties she faces, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. See *id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the district director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(v) of the Act no purpose would be served in granting the applicant's Form I-212.

**ORDER:** The appeal is dismissed.