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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



PUBLIC COPY

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FILE:



Office: LONDON, UNITED KINGDOM

Date:
MAR 11 2011

IN RE:

Applicant:



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, London, United Kingdom, 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 ten years of his last departure from the United States. The applicant is married to a United States citizen and 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 had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 24, 2008.

On appeal, the applicant, through counsel requests that the decision by the United States Citizenship and Immigration Services (USCIS) be reconsidered based on "compassionate grounds." *Form I-290B*, filed October 27, 2008.

The record includes, but is not limited to, previous counsel's brief in support of the Form I-601, statements from the applicant and his wife, medical documentation for the applicant and his wife, tax documents, a lease agreement, bank statements, household bills, utility bills, the U.S. Central Intelligence Agency World Factbook section on India, a cost of living document, and documents for the applicant's removal proceeding. The entire record was reviewed and considered in arriving at 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.

....

(iii) Exceptions.-

....

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

.....
(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 indicates that the applicant entered the United States on April 24, 1994 without inspection. On or about July 11, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). The applicant withdrew his asylum claim, and on August 11, 2003, an immigration judge granted the applicant voluntary departure to depart the United States by December 9, 2003. On February 8, 2006, the applicant departed the United States.

The applicant accrued unlawful presence from December 10, 2003, the day after he failed to voluntarily depart the United States as ordered, until February 8, 2006, when he departed the United States. The applicant is seeking admission into the United States within ten years of his February 8, 2006 departure. 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.

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 wife 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).

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 (Board) 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 ██████████*, 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 ██████████* 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 ██████████ 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.

The first prong of the analysis addresses hardship to the applicant's spouse if she relocates to India. In previous counsel's brief in support of the Form I-601 dated August 10, 2007, counsel states that the applicant's wife "will absolutely sacrifice her earning power and accept dim financial prospects if she is forced to live abroad." Additionally, prior counsel states "[i]f they were both employed in India, their prospects are bleak in comparison." Prior counsel claims that "[t]he economic and quality of life situation in India is far worse for persons in the [applicant's and his wife's] situation than that in the United States. There are several issues involved, including the economy, environment, overcrowding and security concerns." The AAO notes the financial concerns of the applicant's wife should she relocate to India.

In an attachment to the Form I-290B, the applicant claims that his wife "is suffering from depression and colitis and she is unable to become pregnant since miscarriage in January, 2005." The AAO notes that medical documentation in the record establishes that the applicant's wife is suffering from depression and she is receiving medical treatment in [REDACTED]. See letter from [REDACTED], dated October 14, 2008. Additionally, medical documentation in the record establishes that the applicant's wife was diagnosed with colitis in 2005. See medical report, dated January 21, 2005. Counsel claims that in India, "the state of available medical care is exponentially worse. Neither [the applicant] nor [the applicant's wife] could expect to receive adequate health care." The AAO notes that other than counsel's statement, there is no documentation in the record that the applicant's wife cannot be treated for her medical conditions in India or that she has to return to the United States to receive treatment. 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)). In fact, in an undated statement, the applicant's wife states she has gone to "India for [her] medical treatment." See also letter from [REDACTED] dated April 10, 2008. The AAO also notes that medical documentation in the record establishes that the applicant's wife was seeing a gynecologist in India. However, the AAO notes the medical concerns of the applicant's wife.

The AAO acknowledges that the applicant's wife has resided in the United States for many years; however, she is a native of India and it has not been established that she does not speak the useful languages or have any family ties to India. Additionally, the AAO notes that other than the U.S. Central Intelligence Agency World Factbook section on India, the record fails to contain documentary evidence, e.g., country conditions reports on India, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to India.

In addition, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. In an undated statement, the applicant's wife states that when she was alone in the United States, she cried "because of [the] possibility of losing the closeness [they] share if [the applicant] is

forced to stay in U.K. or India the next 10 years.” She states she is sick, she is suffering “mental distress,” she “has colitis,” and she cannot live alone. Additionally, as noted above, medical documentation in the record establishes that the applicant’s wife is suffering from depression and she is receiving medical treatment in Glasgow. *See letter from [REDACTED], supra.* The applicant states that because his wife “needs extra care,” he “cannot leave her in this condition.” The AAO notes that the applicant’s wife may be suffering some emotional problems; however, the submitted medical document does not establish that her emotional hardships go beyond the typical effects of separation or relocating to another country. The applicant’s wife states the applicant is “also sick.” The applicant states he has abdominal pain. The AAO notes that medical documentation in the record establishes that in 2003, the applicant was diagnosed with reflux and irritable bowel syndrome. *See letter from [REDACTED] dated October 14, 2003.* Additionally, in 2008, the applicant was suffering from abdominal pain. *See special statement by the doctor, dated February 26, 2008.* The applicant states if he stays in the United Kingdom and his wife returns to the United States, no one will look after him and his wife with their “bad health conditions.” The applicant’s wife states she and the applicant “cannot live separately.” The AAO notes the applicant’s and his wife’s medical and mental health concerns.

Prior counsel states “there is a severe economic hardship to [the applicant’s wife] should the waiver be denied.” The applicant’s wife states that she is currently residing with the applicant in the United Kingdom; however, when they left the United States they “lost everything,” including their home. In an undated statement, the applicant states he also lost his job that he had for ten years. The applicant’s wife states she cannot afford all the “expense[s] without [the applicant].” She claims that the applicant paid her health insurance in the United States. She states that if she returns to the United States without the applicant, she will “face so many problems,” including rent on an apartment, utility bills, a car, and health and car insurance. Former counsel states the applicant’s wife will also “be forced to share money with [the applicant] to provide for his and her separate living expenses.” Additionally, former counsel claims that the applicant’s wife will have to “spend money to be able to travel to see [the applicant].” The AAO notes the financial concerns of the applicant’s wife.

The AAO finds the record to include some documentation of the applicant’s and his wife’s expenses in the United States; however, this material offers insufficient proof that the applicant’s wife would be unable to support herself in the applicant’s absence. Additionally, no documentary evidence has been submitted establishing that the applicant cannot obtain employment in India that could help reduce the financial burden on his wife. Further, the AAO notes that the applicant is currently employed in the United Kingdom. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she returns to the United States.

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)(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.