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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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[REDACTED]

Date: OCT 28 2011

Office: BALTIMORE, MARYLAND FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 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, Baltimore, Maryland. The matter 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 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 again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a lawful permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The District Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the District Director* dated May 11, 2009.

The applicant's attorney submitted an appeal brief in support of the applicant's waiver application. In the brief, the applicant's attorney contends that the qualifying spouse would suffer if the applicant returned to Pakistan because he would be unable to care for his son who suffers from "severe and progressively worsening asthma." Further, the applicant's attorney asserts that the qualifying spouse would suffer financially because he is currently working two jobs and could not afford child care for his children. He further asserts that the applicant cannot relocate to Pakistan because he would not be able to earn a sufficient income to support his family or to afford and/or obtain proper medical care for his asthmatic son in Pakistan.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), briefs written on behalf of the applicant, affidavits from the qualifying spouse and the applicant, a copy of the qualifying relative's permanent resident card, a marriage certificate, birth certificates and passports for two of their children, medical documentation regarding one of the children, financial documentation and documentation submitted with the Application to Adjust Status (Form I-485). 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.

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. The applicant's husband 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-I-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.

The applicant’s qualifying relative is her lawful permanent resident husband. The record indicates that the applicant entered the United States as a B-2 visitor on November 2, 2000, with authorization to remain until May 1, 2001. The applicant failed to extend her non-immigrant status or to depart the United States by May 1, 2001. Thereafter, the applicant obtained advance parole and reentered the United States on March 16, 2008. The applicant accrued unlawful presence from May 1, 2001 until she filed the Form I-485 on June 25, 2007, a period of more than one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States.

The applicant’s attorney asserts that the applicant is not inadmissible because she traveled outside the country under the grant of advance parole. The attorney also submits that the applicant is eligible to adjust her status “despite prior unlawful presence, by filing the appropriate application and paying the applicable penalty.” However, the applicant’s attorney does not provide any case law or statutory basis for such assertions. The applicant’s attorney is correct that the applicant may be eligible to apply for adjustment of status under section 245 (i) of the Act, but her departure after accruing more than one year of unlawful presence triggered the ten year bar to admissibility under section 212(a)(9)(B)(i)(II), and her waiver of inadmissibility must be granted in order to adjust her status.

The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, briefs written on behalf of the applicant, affidavits from the qualifying spouse and the applicant, birth certificates and passports for two of their children, medical

documentation regarding one of the children, financial documentation and documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney contends that the qualifying spouse would suffer if the applicant returned to Pakistan because he would be unable to care for his son, who suffers from "severe and progressively worsening asthma." Further, the applicant's attorney asserts that the qualifying spouse would suffer financially because he is currently working two jobs and could not afford child care for his children. He further asserts that the applicant cannot relocate to Pakistan because he would not be able to earn a sufficient income to support his family or to afford and/or obtain proper medical care for his asthmatic son in Pakistan.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the qualifying spouse will encounter hardship in the care of their asthmatic child as a result of the applicant's inadmissibility. The record contains a doctor's letter, an email and a medical invoice for the medical equipment purchased for their child's asthma. The letter from the doctor indicates that the child "suffers frequent asthma attacks" and that he currently requires medication. The doctor's letter also states that the child has not been admitted to the hospital for his asthma. The email, written by the same doctor, states that the child has suffered an asthma attack in the last six months and was "solely cared [for] by his mother." While it is clear that their child has asthma, the severity of his asthma or attacks was not demonstrated through the little evidence provided. Moreover, it is unclear why the qualifying spouse or a caregiver could not care for or assist with the child's health issues. With respect to the financial hardships, the applicant's attorney asserts that the qualifying spouse supports his family and works two jobs, so does not have any time to care for his children and cannot afford child care. The record contains financial documentation, including tax returns and wage and tax statements, confirming that the applicant makes the sole financial contributions towards their family. While the qualifying spouse may have financial difficulties paying for childcare, given his income, there was little information provided regarding the qualifying spouse's expenses and childcare needs, should the qualifying spouse return to Pakistan.

The applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to Pakistan. The applicant's attorney asserts that the qualifying spouse would suffer financially upon relocation because he would be unable to earn a sufficient income to support his family. Further, the applicant's attorney indicates that medical care for their asthmatic son will be difficult to pay for and/or to obtain. The qualifying spouse and applicant also make similar statements in their affidavits. However, the record contains no evidence regarding country conditions in Pakistan to support such assertions. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici* at 165. Further, neither the qualifying spouse nor applicant indicated whether either of them has family in Pakistan that could support them upon relocation. As such, the applicant has not met his burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that she relocates to Pakistan.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under section 212(a)(9)(B) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.