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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

[redacted]

H6

DATE: APR 18 2012 Office: ACCRA, GHANA FILE: [redacted]

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 (the Act), 8 U.S.C. section 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 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, Ghana. The applicant appealed the Field Office Director's decision, but the appeal was rejected as untimely and remanded to the Field Office for consideration as a Motion to Reopen. The Field Office Director denied the Motion to Reopen and the appeal is now before the AAO. The appeal will be dismissed.

The applicant is a native and citizen of Togo. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 17, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was in error, that the applicant's spouse will suffer extreme hardship due to medical conditions and that the Field Office Director misinterpreted the immigration judge's holding in removal proceedings in determining whether the applicant was ineligible as a matter of discretion. *Form I-290B*, received on August 12, 2009.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (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 record indicates that the applicant was admitted to the United States as an F-1 student on June 30, 2001. The applicant filed Form I-589, Application for Asylum and Withholding of Removal, on or about July 3, 2002. The applicant was placed in removal proceedings on or about September 9, 2002 due to his failure to maintain F-1 student status. On February 4, 2003, the applicant's application for asylum was denied and he was ordered removed from the United States. The applicant subsequently filed several motions to reopen with the Board of Immigration Appeals, the last of which was denied on September 28, 2005. The applicant filed an appeal to the Fourth Circuit Court of Appeals but the petition was denied on July 6, 2006. The applicant was apprehended on August 9, 2007, and removed from the United States on September 12, 2007. The applicant accrued

unlawful presence from at least July 6, 2006 until his removal on September 12, 2007, a period over one year. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, a brief from counsel; statements from the applicant's spouse; country conditions materials on Togo; medical records for the applicant's spouse; financial documents; documents filed in relation to the applicant's removal proceedings; and photographs of the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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.

In support of the appeal, the applicant's spouse states that she suffers from asthma and sickle cell anemia. She states that relocating to Togo would be impossible and would result in extreme hardship. The applicant states that Togo lacks a reliable healthcare system and that she would be unable to obtain proper medication. In addition, the applicant's spouse states that relocation to Togo would result in a loss of her income.

The record also contains a letter from [redacted] states that he is treating the applicant's spouse for asthma, which is a long-term chronic condition. [redacted] further states that, when the applicant's spouse returns to Togo for visits, the environmental conditions there cause her asthma symptoms to worsen. [redacted] also states that there is very little modern healthcare available in Togo. Although the basis of [redacted] statement in this regard is unclear, the AAO notes that the record includes country conditions information on Togo. The Country Specific Information form the Department of State states that medical facilities in Togo "are limited and of very poor quality." This document further states that the "[a]vailability of medications through local pharmacies is unreliable." The record contains documentation showing that the applicant's spouse has been prescribed medication for her asthma.

The AAO finds that the record is sufficient to establish that the applicant's spouse would experience extreme hardship were she to relocate to Togo with the applicant. As noted, the record reflects that the applicant has been diagnosed with asthma and has been prescribed medication for her condition. The record reflects that healthcare is limited in Togo and that the availability of medications is unreliable. In addition, the record reflects that the applicant's spouse has resided in the United States for a lengthy period of time and has long-term employment in the United States which she would necessarily abandon upon relocation. Considering these factors along with the normal results of relocation, the AAO finds that the applicant's spouse would experience extreme hardship were she to relocate to Togo.

However, the AAO finds that the applicant has failed to establish that his spouse would experience extreme hardship as a result of separation from the applicant. On appeal, the applicant's spouse states that she is experiencing physical pain as a result of her medical conditions. The applicant's spouse further states that her asthma "medically requires a person's assistance to avoid injury or deaths when severe attacks occur" and that there is no one in the U.S. who can provide her with the assistance in the applicant's absence. The applicant's spouse states that her sickle cell anemia causes her physical pain and that she needs the applicant's assistance due to this pain. The applicant's spouse also states that she is experiencing emotional hardship as a result of separation from the applicant. In addition, counsel previously stated in support of the Form I-601 that the applicant's spouse has significant financial obligations, is under great pressure to support herself without her husband, and feels on the verge of losing her job.

As noted above, the record reflects that the applicant's spouse is being treated for asthma and has been prescribed medication for the treatment of her asthma. However, the record is not sufficient to establish that the applicant's spouse is experiencing significant hardship as a result of her medical condition. Further, although the record reflects that the applicant's spouse carry's the "sickle cell trait," there is insufficient evidence to establish how this impacts the applicant's spouse. 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)).

With respect to emotional hardship, the record contains a letter from [redacted] which states that the applicant attended a counseling session on September 27, 2007. The letter states that the applicant's spouse "presented with stress and grief related to her husband recently being deported." [redacted] recommends that the applicant's spouse continue with weekly, ongoing therapy to address her grief and depressive symptoms. Although the AAO recognizes that the applicant's spouse has experience and may continue to experience some emotional difficulty as a result of separation from the applicant, the record does not establish that the difficulties experienced by the applicant's spouse go beyond those normally experienced by family members of inadmissible aliens.

With respect to financial hardship, the record includes evidence of the applicant's and applicant's spouse's income and copies of several bills. However, the record does not establish that the applicant's spouse is unable to meet her financial obligations or is otherwise unable to support herself. Rather, in a statement dated September 23, 2008, the applicant's spouse stated that she can "handle" her debts and financial obligations in the United States so long as she is working. As noted, the record reflects that the applicant's spouse is employed. Thus, although the applicant's spouse may experience some financial difficulties as a result of separation from the applicant, the AAO finds that the record does not establish that these difficulties go beyond those normally experienced by family members of inadmissible aliens.

Although the record reflects that the applicant's spouse may experience some difficulties as a result of separation from the applicant, the AAO finds that, even when these difficulties are considered in the aggregate, the record fails to establish that the applicant's spouse would experience extreme hardship as a result of separation from the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 rests 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.