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



U.S. Citizenship  
and Immigration  
Services



H6

DATE: APR 24 2012 Office: AMMAN, JORDAN

FILE



IN RE:



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,

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director (FOD), Amman, Jordan and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Jordan 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 admission within 10 years of his last departure. The applicant's father is a U.S. citizen and his mother is a legal permanent resident of the United States. He seeks a waiver under 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 parents.

The FOD concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on his qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated October 20, 2009.

On appeal, the applicant states that his parents live in the United States and they need him "badly." The applicant submits additional evidence for consideration.

The record includes, but is not limited to, statements from the applicant's parents and a letter from a physician. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The record reflects that the applicant entered the United States on June 28, 2001 with a B-1/B-2 nonimmigrant visa, which authorized him to remain in the United States until December 27, 2001. At the time of his entry into the United States, the applicant was 13 years old. He turned 18 years of age on Feb 25, 2006. The record reflects that the applicant departed the United States on January 3, 2008.<sup>1</sup> Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence from February 26, 2006, the day after his 18<sup>th</sup> birthday, until his departure in January 2008. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2008 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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 or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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).

In the present case, the record reflects that the applicant's father is a U.S. citizen and his mother is a legal permanent resident of the United States. The applicant also has a U.S. citizen sister and a

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<sup>1</sup> The record contains conflicting information regarding the exact date of the applicant's entry in 2001 and his departure date, which was either in January 2008 or January 2009. These inconsistencies are inconsequential to the unlawful presence determination, because the applicant started accruing unlawful presence in February 2006, and relying on either date for his departure, the applicant has accrued more than one year of unlawful presence.

brother who is a legal permanent resident of the United States. The applicant's parents meet the definition of a qualifying relative. The applicant's siblings are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's parents.

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, 631-32 (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, "[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., 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). 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 AAO now turns to the question of whether the applicant in the present case has established that his parents would experience extreme hardship as a result of his inadmissibility.

The applicant's parents state that they are suffering because the family is "split into two parts." They worry about the safety of the applicant and his brother in Jordan, their health, and "all their affairs." They state that the applicant's mother needs the applicant to care for her and to accompany her to the doctor. They also state that the applicant's father's business would benefit from the applicant and his brother's presence because that would reduce the father's dependence on others. The applicant's parents also state that the applicant's brother in Jordan is having psychological problems. They state that if their suffering and hardship continue, they all will develop various health problems.

The applicant's parents state that separation is also causing financial hardships because they pay for the applicant's rent, personal expenses, daily phone calls, and the mother's visits to Jordan. They state that because the applicant is not proficient in Arabic, he is unable to find employment in Jordan.

The record contains a November 2009 letter from [REDACTED] stating that the applicant's mother has a history of hypertension, congestive heart failure, diabetes, and valvular heart disease. [REDACTED] states that because the applicant's mother has significant limitations in her functional capacity and needs help on a regular basis, she would benefit "from family members being around her."

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his parents resulting from their separation. The record indicates that the applicant's mother is experiencing multiple health problems, however, it does not demonstrate what type of assistance she needs, and whether her other children who live in the United States are unable to assist her. The record also does not indicate how applicant's brother's psychological problems are affecting the applicant's parents. Moreover, though the parents state they financially support the applicant and his brother, the record lacks evidence demonstrating their financial obligations in Jordan and in the United

States. The applicant failed to submit evidence demonstrating his parents' income and their household expenses in the United States and how his absence negatively impacts the family financially. The record also lacks supporting evidence that the applicant is unable to obtain employment in Jordan. The applicant's parents raise a concern about the applicant's safety in Jordan, however there is no evidence in the record to support their concern. The assertions of the applicant's parents are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In the absence of supporting evidence, the AAO will not speculate on the applicant's parents' emotional state or on their financial status and therefore concludes that the applicant has failed to establish that his parents are experiencing extreme hardship due to separation.

The AAO finds that the applicant has also failed to demonstrate that his parents would experience extreme hardship if they join him in Jordan. The applicant makes no claims that his parents would experience extreme hardship were they to relocate to live with him in Jordan. Without assertions from the applicant and supporting evidence, the AAO cannot conclude that his parents would experience extreme hardship if they relocate to Jordan.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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. 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.