



H6

DATE: DEC 24 2012

Office: BANGKOK

File: 

IN RE: Applicant: 

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. § 1182(a)(9)(B)(v)

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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 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. His wife is a lawful permanent resident, and he is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the District Director*, August 3, 2011.

On appeal, the counsel for the applicant submits a brief contending the district director erred as a matter of law in not finding extreme hardship to a qualifying relative and as a matter of fact in failing to consider all the evidence submitted. The entire record was reviewed and considered in rendering this decision.

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.

.....

(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 Attorney General (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....

The applicant entered the United States without admission or parole on July 15, 1992 and filed an asylum application on October 30, 1992. Concurrent with denial of the asylum application on July 26, 2000, an Immigration Judge denied the applicant's request for withholding of removal or for voluntary departure and issued a removal order. After an appeal of this decision was dismissed on December 6, 2002, the applicant was scheduled to leave the country on January 27, 2004. Meanwhile, he married the qualifying relative herein on August 8, 2003, then failed to appear for his arranged departure, and remained in the United States until removed on July 18, 2008. He accrued

unlawful presence from December 6, 2002 until his removal in July 2008, and is therefore inadmissible for accruing one year or more of unlawful presence, as well as for having been ordered removed under section 240 of the Act. In addition to requiring a waiver to immigrate before July 19, 2018, the applicant currently must obtain consent to reapply for admission¹ due to his removal under a Final Order of Deportation.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 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-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 clear that "[r]elevant factors, though not extreme in themselves, must be considered

¹ This appeal is limited to denial of the application for waiver of unlawful presence under section 212(a)(9)(B)(v) of the Act. The applicant has not appealed denial of his Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212).

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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from separation, there is no documentary evidence that the applicant’s wife has incurred emotional hardship from her husband’s absence beyond the normal and typical impact of separation from a loved one. Although she claims his departure turned her life upside down, there is nothing on record to substantiate the claim that her husband’s absence has caused her any specific physical or psychological harm. The AAO notes evidence that his deportation occurred over eight years after he was ordered removed and more than four years after he was scheduled to depart. In the Form I-130 filed in May 2004, his wife’s reference to the July 2000 removal proceedings establishes her awareness of the removal order. She claims that her 10 year-old son needs his stepfather due to his youth and because the applicant treats him like a son, but offers no evidence to substantiate that their bond is any different than the usual bond of affection between parent and child. Although the record reflects the child misses his stepfather, there is no documentation showing that the applicant’s absence has had such an impact on him as to cause hardship to his mother. As regards the qualifying relative’s 24 year old daughter, there is similarly no evidence establishing that the applicant’s absence is such a hardship to an adult stepchild that it imposes hardship on the applicant’s wife. 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)). The record reflects that both children live with their mother and that they, together with the religious community to which they belong, comprise her support network.

To support the claim that the applicant’s absence imposed a financial burden, counsel provides a loan modification document in the qualifying relative’s name and more than ten years of tax returns. The evidence is inconclusive regarding each spouse’s relative contribution to household income, as

it reflects that the applicant was self-employed and shows that, in the two years after the applicant's departure, household adjustable gross income increased. The original mortgage and property deed are not provided and there is no documentation to substantiate the claim that the applicant's wife is not current on her mortgage payments, no evidence of other household expenses, and no suggestion that her husband is unable to support himself and thus represents a financial burden. The qualifying relative claims that her husband's job prospects are poor, but offers no evidence regarding the current job market or showing that he has sought employment. She claims to have twice visited the applicant since his departure to help minimize the pain of living apart.

Documentation in the record, when considered in its totality, does not show that the applicant's wife is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that his wife will endure hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under the Act.

Regarding relocation, the evidence fails to establish that moving to India would impose extreme hardship on the qualifying relative. The record reflects that the applicant's wife has twice visited him in India, first alone and then accompanied by her children, and reports enjoying every moment they were there. While counsel contends that it would be too difficult for the applicant's wife to move back to her native country, the record shows that she lived until the age of 40 in the same region where her husband is located. The applicant's wife claims that relocation would bring poor job prospects due to her education level, limited healthcare options, and a less attractive future. However, there is no evidence of her educational background, of her work history prior to emigrating from India, or that she has investigated employment, and no suggestion she has any medical conditions for which necessary care would be unavailable. There is no documentation of current medical insurance coverage, nor any support for the contention that medical bills in India would be outrageous. The record reflects that, as a native of the area, she would not encounter language or cultural barriers in returning to her homeland. Neither specific concerns about religious persecution nor general safety concerns are substantiated by the record. The AAO notes that similar claims were rejected by the Immigration Judge who denied the applicant's asylum application in 2000, and official U.S. government reporting does not reflect that circumstances have changed. *See International Religious Freedom Report, 2011—India*, U.S. Department of State (DOS); *see also India—Country Specific Information*, DOS, April 3, 2012 (while acknowledging that religious violence occasionally occurs in India, DOS does not list the applicant's native region as subject to unrest or off limits to travelers). Counsel's assertion -- that since India is less developed than the United States, moving there would be an extreme hardship -- is not substantiated by the record.

Similarly unsupported is the contention that the qualifying relative's children would suffer the hardship of diminished educational opportunities. The AAO notes that her adult daughter completed some post-secondary studies before taking a full-time job. There is no evidence that she would have to give up her job, leave the family home, and accompany her mother to India. The applicant offers no documentation of any challenges his stepson would face in moving overseas, and there is no indication in the record regarding whether he has any option to remain in the United States,

including with his natural father.² Other than her children, the qualifying relative's U.S. ties consist of membership in a faith-based community, employment, and her house. Beyond the inconvenience of relocating and a preference to stay in the United States, the appeal contains no evidence showing the applicant's wife is unable to live in India. While reflecting that she left India in 1999 at the age of 40, the record is silent regarding her life there prior to emigrating and lacks evidence about family and social contacts that remain. While not insensitive to her concern about forfeiting U.S. permanent residency, the AAO notes that she is not required to move overseas, but if choosing to do so, she may take steps before leaving the country to mitigate the risk of losing her status.

The record reflects that the qualifying relative has lived here for 13 years and is 53 years old. She and the applicant are from the same region of India. Other than employment shown only by a job title on her tax return and evidence that her children live here, she demonstrates few ties to the United States. There is no evidence showing she would have difficulty reintegrating to her native land and no documentation that her children would have problems adapting that might cause her hardship. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship were she to relocate abroad.

The documentation on record, when considered in its totality, reflects that the applicant has not established his wife will suffer extreme hardship if he is unable to live in the United States as a permanent resident. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, 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.

² While the record contains the son's birth certificate listing his father by name, there is no documentation regarding the qualifying relative's first husband, other than her notation on the approved Form I-130 she filed for the applicant. There is no indication what relationship her son has with a father whom she divorced just before her son was born.