

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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**

H6

DATE: **FEB 01 2012**

Office: BANGKOK

FILE: [REDACTED]

IN RE: Applicant: VIJAY KUMAR

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) of the Immigration and Nationality 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 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, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of India, entered the United States without authorization in January 1998 and did not depart the United States until October 2007. The applicant was thus 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 more than one year. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen spouse and child, born in 2004.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 26, 2009.

In support of the appeal, counsel for the applicant submits a statement from the applicant's spouse, dated March 16, 2009. In addition, supplemental evidence in support of the instant appeal was received by the AAO on May 5, 2009. The entire record was reviewed and considered in rendering this decision.

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

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.

....

(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...

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or his child 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-Morales*, 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.

The applicant's U.S. citizen spouse contends that she will suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration she explains that her husband is the love of her life and were he to relocate abroad, she would experience emotional hardship. In addition, she notes that her son needs his father to grow up and develop into a healthy and productive citizen and were the applicant to reside abroad, her son would suffer hardship. Finally, the applicant's spouse explains that she is currently a homemaker with only a high school education. Were her husband to relocate abroad, she asserts that she would not be able to obtain gainful employment to pay her bills and moreover, she would have to pay for childcare coverage, thereby causing her financial hardship. *Notice of Appeal*, dated March 16, 2009.

To begin, the record contains no supporting evidence concerning the emotional hardship the applicant's spouse states she will experience due to continued separation from her husband. The AAO notes that the letter from [REDACTED] a psychiatrist in India, outlining that the applicant's spouse is suffering from a depressive episode, relates to her time in India, as the applicant's spouse explains in her statement, and does not establish that the applicant's spouse will experience emotional hardship were she to remain in the United States while her husband resides abroad. Nor has it been established that the applicant's spouse would be unable to travel to India, her native country, to visit her husband, as the record indicates she has been doing since the applicant's departure in 2007. In addition, the record fails to establish that the applicant's child would suffer extreme emotional hardship were he to remain in the United States with his mother, thereby causing hardship to the applicant's spouse, the only qualifying relative in this case. Moreover, the record establishes that the applicant's spouse has a support network in the United States, including her parents and other family members. It has not been established that they would be unable to assist the applicant's spouse, emotionally and/or financially. 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)).

As for the financial hardship referenced, no documentation has been provided establishing the applicant's and his family's current income and expenses and assets and liabilities, their needs, and the applicant's past financial contributions to the household prior to his departure from the United States in 2007, to establish that without the applicant's physical presence in the United States, his wife will experience financial hardship. Moreover, counsel has failed to establish that the applicant's spouse would be unable to obtain gainful employment in the United States, as she has done in the past as noted on her Form G-325A, Biographic Information, to ameliorate the financial hardship referenced.

The AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Thus, the AAO concludes that it has not been established that the applicant's spouse will suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to her inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse asserts that she does not want to relocate to India as she and her child will suffer in a foreign country, thereby causing her emotional hardship. She notes that while in India, she has been diagnosed with depression, is seeing a psychiatrist and is taking medications. She further explains that she has suffered from gastroenteritis and other stomach issues due to the poor quality of the water and the substandard sanitation. In addition, the applicant's spouse contends that the academic opportunities in India are not in line with those in the United States and were she and her son to reside in India with the applicant, her son will be deprived of an American education, thereby causing her hardship. Moreover, the applicant's spouse asserts that the only job her husband can get is as a field hand and thus, she will not be able to maintain her standard of living.¹ Finally, the applicant's spouse explains that none of her relatives live in India and being so far away from them will cause her hardship. *Supra* at 1-3.

In support, a letter has been provided from [REDACTED] establishing that the applicant's spouse has been diagnosed with depression and is taking medication to treat her mental health condition. *Letter from* [REDACTED] In addition, medical documentation has been provided establishing the applicant's spouse's medical and mental health conditions while in India. Finally, the U.S. Department of State references the risks of U.S. citizens becoming victims of terrorism in India. *Country Specific Information-India, U.S. Department of State*, dated July 28, 2011.

The record reflects that the applicant's U.S. citizen spouse became a permanent resident over 17 years ago. Were she to relocate to India to reside with the applicant, she would be relocating to a

¹ The U.S. Department of State notes that 700 million Indians live on \$2 per day or less. *Background Note-India, U.S. Department of State*, dated November 8, 2011.

country with which she is no longer familiar. She would have to leave her extended family and community. In addition, the record establishes that the applicant's spouse would be at risk of mental and medical health problems in India, as she experienced while in India with her husband in 2008. Finally, the applicant's spouse would be concerned for her and her child's safety and well-being due to the problematic country conditions and terrorist activity in India. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant, the record fails to establish that the applicant's U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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. The waiver application is denied.