

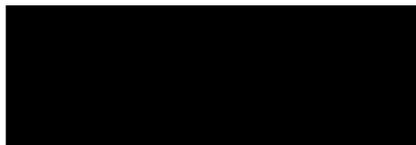
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



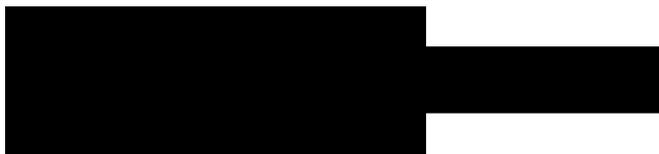
H6

Date: **FEB 13 2012** Office: **MANILA** 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:



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 Field Office Director, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Fiji who entered the United States in May 1999 with a valid B-2 nonimmigrant visa and subsequently filed the Form I-589, Request for Asylum and for Withholding of Removal in November 1999. In July 2002, the applicant's requests for asylum, withholding of removal, voluntary departure and Relief under the Convention Against Torture were denied. The Board of Immigration Appeals (BIA) dismissed the appeal of the applicant's asylum and withholding of removal denial in November 2003. The applicant filed a petition for review and motion for stay of removal with the U.S. Court of Appeals for the Ninth Circuit in December 2003. A motion for voluntary dismissal was filed with the U.S. Court of appeals by the applicant in January 2008.¹ The applicant's motion for voluntary dismissal was granted by the U.S. Court of Appeals for the Ninth Circuit on January 17, 2008. The applicant did not depart the United States until October 2008. The AAO further notes that the record establishes that the applicant was employed without authorization for a period between February 2000 and September 2000. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 21, 2009.

On appeal, counsel submits the following: a brief, dated September 11, 2009; an affidavit from the applicant's spouse; Comparative Market Analysis, dated August 24, 2009; evidence of the applicant's spouse's daughter's college enrollment agreement and costs; evidence of the applicant's spouse's ownership of a truck for commercial use; and medical documentation pertaining to the applicant. 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.-

¹ While the petition for review with the U.S. Court of Appeals for the Ninth Circuit was pending, the applicant filed a Motion to Reopen with the BIA in July 2006 based upon ineffective assistance of two prior attorneys. The BIA dismissed the motion on January 25, 2007. On February 14, 2007, the applicant filed a second petition for review with the U.S. Court of Appeals for the Ninth Circuit based upon the BIA's denial of the Motion to Reopen along with a motion to consolidate appeals.

(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.

....

(iii) Exceptions

(II) Asylees

No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization.

(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 the applicant's spouse's daughter, born in 1991, 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 he will suffer emotional and financial hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration the applicant's spouse asserts that he recently lost his job and were his wife to reside in the United States, she would be able to obtain gainful employment to assist with the finances of the household. In addition, the applicant's spouse contends that he is distressed both physically and psychologically as a result of long-term separation from his wife. He asserts that he has sleepless nights and is unable to concentrate and that is likely the reason he was laid off. *Sworn Statement of Rakesh Ram*, dated August 18, 2009.

To begin, the record contains no supporting evidence concerning the emotional and physical hardship the applicant's spouse states he is experiencing due to long-term separation from his spouse. Nor has it been established that the applicant's spouse is unable to travel to Fiji, his home country, on a regular basis to visit his wife. Moreover, with respect to the applicant's spouse's recent loss of employment and his need for his wife to return to the United States to help provide for the family, no documentation has been provided on appeal establishing the applicant's and his spouse's income and expenses and assets and liabilities to establish that as a result of the applicant's physical absence, her husband is experiencing hardship. Alternatively, it has not been established that the applicant is unable to obtain gainful employment in Fiji that would permit her to assist her husband financially in the United States. 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

In regards to relocating abroad to reside with the applicant due to her inadmissibility, the applicant's spouse explains that he has been residing in the United States since 1997 and no longer has ties to Fiji. He notes that his three siblings and a daughter from his previous marriage, for whom he pays child support under court order until she turns twenty-one, reside in the United States, and long-term separation from them would cause him hardship. In addition, the applicant's spouse explains that he owns two homes and a truck and trailer for commercial purposes but were he to relocate abroad, he would have to sell at a value significantly below market value as a result of the problematic economy in the United States, thereby causing him financial hardship. Moreover, the applicant's spouse contends that country conditions in Fiji remain volatile, uncertain and unstable and consequently, he does not want to reside in Fiji. *Supra* at 2 and *Sworn Statement of* [REDACTED] dated April 30, 2009.

The record establishes that the applicant's spouse has been residing in the United States since 1997, more than 14 years. Were he to relocate abroad to reside with the applicant, he would be relocating to a country with which he is no longer familiar. He would have to leave his community, his

properties, his commercial vehicle, his family, including his siblings and his daughter and he would be concerned about his safety and well-being in Fiji.² It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her 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.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

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.

² As noted by the U.S. Department of State,

The Department of State advises U.S. Citizens to exercise caution when traveling to or within Fiji. The political situation is unpredictable, and the rule of law has deteriorated since the December 2006 military coup. The independence of the judicial system is compromised and basic freedoms are limited. The Government of Fiji rules by decree, maintaining Public Emergency Regulations that limit freedom of speech, freedom of the media, and freedom of assembly. Additionally, the U.S. Embassy has noted growing anti-U.S. rhetoric in the government-controlled media. *Country Specific Information-Fiji U.S. Department of State*, dated January 13, 2012.