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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 16 2012** Office: LONDON FILE: [REDACTED]

IN RE: [REDACTED]

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,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, London. 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 Brazil who entered the United States in July 2000 with a valid B-2 nonimmigrant visa and remained beyond the period of authorized stay. The applicant departed the United States in December 2005. 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, he seeks a waiver of inadmissibility to reside in the United States with his U.S. citizen spouse and child, born in 2002.

The district 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 District Director*, dated October 15, 2009.

On appeal, the applicant submits the following: a letter, documentation establishing a job offer for the applicant in the United States, a letter from the applicant's spouse, a copy of a prescription for the applicant's spouse, and a letter from the applicant's child's teacher. In addition, on September 12, 2011, the AAO received a letter from the applicant's U.S. citizen child. 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, their child, or the applicant's spouse's adult children from a previous marriage 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 hardship were she to return to the United States to reside while the applicant remains abroad due to his inadmissibility. In a declaration the applicant’s spouse states that were she to be separated from her husband on a long-term basis, she would experience emotional hardship. In addition, the applicant’s spouse asserts that she does not want to separate her youngest son, [REDACTED] from his father as such a separation would cause her hardship. *Letter from [REDACTED]* Moreover, the applicant contends that were his wife to return to the United States without him, she would need to find accommodation, a job and settle their son into a school without his support and that would be a real hardship for her. *Letter from [REDACTED]*

The record contains no supporting evidence concerning the emotional hardship the applicant’s spouse states she and her child would experience were they to return to the United States to reside while the applicant remained abroad due to his inadmissibility. The AAO notes that the letter provided by the applicant’s child’s teacher confirms that the applicant’s child would be able to settle into any class of similar aged children. See *Letter from [REDACTED]* [REDACTED] dated November 3, 2009. Nor has it been established that the applicant’s spouse is unable to travel to the United Kingdom, her home country, on a regular basis to visit her husband. Furthermore, no documentation has been provided establishing that settling back in the United States would cause the applicant’s spouse hardship. The AAO notes that the applicant’s spouse’s two adult children currently reside in the United States and presumably would be able to provide assistance to their mother and step-brother should the need arise. 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, her situation, if she returns to the United States to reside, 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 his inadmissibility, the record establishes that the applicant's spouse has been residing with the applicant in the United Kingdom since December 2005. The applicant's spouse contends that living with her husband in the United Kingdom is causing her anxiety and distress, as she misses her adult children from a previous marriage who are residing in the United States. She thus contends that continued residence in the United Kingdom would cause her emotional hardship. She notes that although her children from a previous marriage have visited her in the United Kingdom, she asserts that they have no desire to live there. In addition, the applicant's spouse explains that she had a job, friends, a home and a life in the United States and remaining abroad will cause her hardship. *Supra* at 1-2. In support, evidence of a prescription for a 28 day prescription for Zopiclone has been submitted.

To begin, with respect to the emotional hardship referenced, no letter has been provided from the applicant's spouse's treating physician outlining her current mental health condition, the severity of the situation, and what specific hardship she will encounter were she to remain in the United Kingdom with her husband. Moreover, although the record establishes that the applicant's spouse has been residing in the United States for many years, the AAO notes that the applicant's spouse relocated to the United Kingdom in 2005 to help care for her mother and sister. Since her relocation to the United Kingdom, her native country, she has been gainfully employed and her youngest son has been thriving in school. In addition, the record indicates that the applicant's spouse's adult children from a previous marriage, both citizens of the United Kingdom, have traveled to the United Kingdom to visit their mother on numerous occasions. Further, with respect to the applicant's spouse's adult son's referenced seizures, no letter has been provided from a treating physician outlining the severity of the situation and what specific hardships he is experiencing as a result of his mother's residence abroad. Nor has a statement been provided from him outlining the hardships he is experiencing as a result of long-term separation from his mother. The AAO notes that the applicant's spouse is able to travel to the United States on a regular basis to visit her children. It has thus not been established that continued residence in the United Kingdom with the applicant due to his inadmissibility will cause the applicant's spouse extreme hardship.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise 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.