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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

[redacted]

Date: JAN 19 2012 Office: NEW DELHI FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 Field Office Director, New Delhi, India. The matter 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 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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director* dated June 11, 2009.

On appeal, the applicant's spouse asserts in a letter that she is suffering emotional, psychological financial and medical hardships as a result of her separation from the applicant. The qualifying spouse also indicates that she has lived in the United States since 1990, when she left India, has close family ties to the United States and would face language barriers and medical issues if she relocated to India. The qualifying spouse also asserts she would suffer financial hardships in India.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), Notice of Appeal (Form I-290B), a letter from the qualifying spouse, an approved Petition for Alien Relative (Form I-130), medical documentation regarding the qualifying spouse, a marriage certificate, a naturalization certificate for the qualifying spouse, wedding photographs and divorce documentation for the applicant's previous marriage. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, 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.

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. 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 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 qualifying relative in this case is his wife, who is a United States citizen. The record indicates that the applicant entered the United States on July 23, 1998 with authorization to remain until January 22, 1999. On March 15, 1999, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). On January 22, 2001, an Immigration Judge denied his asylum application and ordered his removal from the United States. The applicant appealed this decision to the Board of Immigration Appeals (BIA), which affirmed the Immigration Judge's decision on March 28, 2003. Thereafter, the applicant moved to reopen and reconsider, and these motions were also denied by the BIA. The applicant thereafter petitioned the United States Court of Appeals for the Ninth Circuit for the review of his asylum and adjustment of status petitions, and the Ninth Circuit denied the applicant's petitions for review on June 20, 2005. The applicant was then removed from the United States on February 23, 2006. Although he has an application for asylum pending, the applicant was employed in the United States and failed to have a valid Employment Authorization Document from August 3, 2002 until February 23, 2004, and therefore accrued unlawful presence during this period. He was also unlawfully present from June 20, 2005, when the appeal of his asylum application was denied, until February 23, 2006, the date of his removal. In applying for an immigrant visa, the applicant is seeking admission within ten years of his 2006 removal from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, a letter from the qualifying spouse and medical documentation

regarding the qualifying spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's spouse asserts that she is suffering emotional, psychological financial and medical hardships as a result of her separation from the applicant. The qualifying spouse also indicates that she has lived in the United States since 1990, when she left India, has close family ties to the United States and would encounter language barriers and medical issues if she relocated to India. The qualifying spouse also asserts she would suffer financial hardships in India.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's spouse indicates that she is experiencing emotional and psychological hardships as a result of the applicant's inadmissibility. In her letter, she states that she fears losing her "soul mate." She also states that she is experiencing depression, anxiety, insomnia and stress. The record also contains a letter from the qualifying spouse's internist, who indicates that she is suffering from major depression and is at high risk for developing post-partum depression. The letter fails to provide much detail regarding the qualifying spouse's medical history, and whether her psychological issues are solely related to her pregnancy. Similarly, a "visit verification" record was provided by a psychologist that states she has been suffering from depression for almost a year. However, there was little detail regarding her psychological issues or her treatment. Further, both documents were dated shortly after the applicant's waiver application was denied, and it is not clear how long she has experienced or been treated for depression. Moreover, while the AAO empathizes with the qualifying spouse's psychological issues, she was likely previously aware that her husband may not be able to return to the United States since she married the applicant in India less than a year after he was removed from the United States. As such, the qualifying spouse had reason to expect at the time they were married that the applicant may not be able to live with him in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. As such, the applicant failed to demonstrate that his qualifying spouse will suffer extreme hardship as a result of the waiver being denied.

With regard to the qualifying spouse's financial hardships, she indicates in her letter that she is struggling financially. However, there is no documentation confirming the qualifying spouse's income or expenses to demonstrate whether she is experiencing financial difficulties. Assertions are evidence and will be considered. However, 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)). The qualifying spouse also contends that she is experiencing medical problems such as hypertension and lower back pain. While the record contains a letter that confirms she has been suffering from hypertension and other issues during her pregnancy, the record fails to establish the severity of these conditions or that the applicant's presence would alleviate her pregnancy-related and other medical issues. As such, the applicant failed to provide sufficient evidence to demonstrate that she would suffer extreme hardship upon the applicant's continued inadmissibility.

The applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to India. The applicant's spouse indicates that she came to the United States in 1990. She also indicates that she has close family ties to the United States, including her parents and siblings. Further, she indicates that she cares for her parents, taking them to appointments and assisting with their medical bills. However, there was no documentation to support that her immediate family lives or has lawful status in the United States. Further, no documentary evidence was provided to confirm her parent's medical issues and/or her financial assistance to them. As previously stated, 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, supra,* at 165. Moreover, the qualifying spouse does not indicate whether the applicant or the qualifying spouse has family in India who could assist the qualifying spouse if she relocated there. The qualifying spouse also indicates that she would encounter language barriers because she is not able to communicate well in Punjabi, which she states would hinder her employment opportunities. However, there was no country condition materials provided to demonstrate that she could not find a job as an English speaker. Further, the qualifying spouse states that her husband does not currently make much money and does not have a stable job or health insurance. However, there was no documentary evidence to support these claims. Lastly, the qualifying spouse contends that she will face medical issues, namely problems with allergies and asthma, if she relocated to India. She provided a letter from a doctor in India which indicates that she develops allergies and acute asthma in India. However, the record also contains medical records from the qualifying spouse's internist in the United States, which states that her "asthma is secondary to anxiety." This appears to indicate that the qualifying spouse also suffers from asthma in the United States and not only in India, and there is no indication she would be unable to receive treatment for her condition in India. Therefore, the applicant has not met his burden of demonstrating that his qualifying spouse will suffer extreme hardship in the event that she relocates to India.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(a)(9)(B) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.