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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: JAN 3 0 2012 Office: NEW DELHI, INDIA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: 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); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, and 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 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 seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and the father of three United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant established that extreme hardship would be imposed on the applicant's qualifying relative but denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on discretionary grounds. *Decision of the Field Office Director*, dated September 29, 2009. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision, though no Notice of Appeal or Motion (Form I-290B) was filed for that application.

On appeal, the applicant claims that his wife and children are suffering hardship by being separated from him. *See applicant's statement*, dated October 21, 2009.

The record includes, but is not limited to, statements from the applicant, his wife, and children; letters of support for the applicant and his wife; medical documents for the applicant's daughter; storage documents; insurance documents; and documents regarding the applicant's removal proceeding. The entire record was reviewed and considered in arriving at 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-
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> . . . .
>
> (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.
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> . . . .
>
> (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 [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.

In this case, the record reflects that the applicant entered the United States on December 14, 1993 without inspection. On or about January 9, 1994, the applicant filed the first of two Requests for Asylum in the United States (Form I-589). On April 26, 2000, an immigration judge granted the applicant voluntary departure to depart the United States by August 24, 2000. On May 1, 2002, after the denial of two motions to reopen, the applicant appealed the immigration judge's decision to the Board of Immigration Appeals (Board). On May 27, 2003, the Board affirmed the immigration judge's decision. The applicant failed to depart the United States as ordered by the Board and the immigration judge. On April 18, 2007, the applicant was removed from the United States.

The applicant accrued more than one year of unlawful presence from May 28, 2003, the day after the Board affirmed the immigration judge's decision, until April 18, 2007, the date he was removed from the United States. The applicant's removal from the United States following this period of unlawful presence triggered the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant is seeking admission into the United States within ten years of his April 18, 2007 removal. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his removal.

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. Hardship to the applicant or his children 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 United States Citizenship and Immigration Service (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 AAO notes that even though the Field Office Director found the applicant established that extreme hardship would be imposed on his qualifying relative, the AAO is reviewing the evidence *de novo*.[1]

In an undated statement, the applicant's wife states she cannot move to India because she has "a severe condition with [her] back." The AAO notes that no medical documentation has been submitted establishing that the applicant's wife suffers from any medical conditions. Going on record without

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). In a statement dated June 11, 2008, Dr. Margarita Perez recommends that the applicant's eldest daughter receive psychotherapy and medication management for severe symptoms of depression. However, the AAO notes that no evidence has been submitted establishing that the applicant's daughter is currently receiving psychotherapy. The applicant's wife states she is comfortable with the U.S. doctors and in India, she "would lose the secure feelings that [she is] receiving the best care possible and the ability to communicate effectively with [her] doctors." She states that she would need the applicant to translate for her at the doctor's appointments and that would take time away from his work. She also states that they could not afford healthcare in India, and it "is highly unlikely that [she] would have medical coverage in India to treat [their] health conditions." The AAO acknowledges that the applicant's daughter may be suffering some emotional problems in being separated from her father. However, the AAO notes that the record does not establish that the applicant's daughter has to remain in the United States to receive treatment or that she cannot receive treatment in India. Additionally, the AAO finds that the applicant has not shown that hardship to his daughter has elevated his wife's challenges to an extreme level.

The AAO notes the applicant's wife's concerns regarding the difficulties she would face in relocating to India and her concerns for her children. However, the AAO finds that the difficulties mentioned do not amount to extreme hardship. The applicant's wife states "[t]he inablility to speak, read or write in English would seriously disrupt most all aspects of daily life living in India making it impossible for [her] children and [her] to live there." The applicant's wife states that if they join the applicant in India, "the quality of [her] children's education would be dramatically less and far too unaffordable to obtain equal opportunities similar to what [they] have in the United States." She claims that her children "have special needs in regards to their educational well-being that require [her] to remain in the United States with them." The applicant's wife states her children would need a student visa to attend school in India and they "would need to prove an income of at least $300 USD monthly for each child." She claims that they would not be earning that much money, and it would be a challenge to work in India because she would need a visa. Additionally, she states that she "would be unable to pay off the debt" she has in the United States. The applicant's wife also states that she has "great safety and well being concerns for [herself] and [her] children" in India. The AAO acknowledges that the applicant's children may suffer some hardship in India; however, they are not qualifying relatives, and the applicant has not shown that hardship to his children will elevate his wife's challenges to an extreme level.

The AAO acknowledges that the applicant's wife is a citizen of the United States and that she may experience some hardship in joining the applicant in India. However, the applicant's wife is a native of India, and it has not been established that she does not speak any useful languages, which would help her adapt to the culture of India. Additionally, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on India, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Further, the AAO notes that no documentary evidence has been submitted establishing that the applicant and her children would be unable to receive any necessary medical care in India. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to India.

In addition, though the AAO notes the emotional and medical concerns of the applicant's wife and daughter, the record fails to establish extreme hardship to the applicant's wife if she remains in the United States. The applicant's wife states since the applicant departed the United States, they "have been going through a very depressing phase of life." On appeal, the applicant states his children are "missing [him] a lot." Additionally, he states his daughter suffers from medical conditions and it is important for him to be there for her. [redacted] states the applicant's daughter, [redacted], is suffering from severe depression, which "it was reported began after [the applicant] was sent away from the family." The applicant's wife states [redacted] "is mentally upset" and she has been "recommended for psychotherapy and medication." The AAO notes that the record establishes that [redacted] recommended that the applicant's daughter receive psychotherapy and medication "to help her with her severe symptoms of depression." Additionally, the record establishes that [redacted] suffers from asthma and allergic rhinitis, and takes medication to help control her conditions. *See statement from* [redacted] undated. The applicant's wife states she had "a very emotional-distressing childhood, due to the early demise of [her] father and then [her] brother being shot dead," and she states she does not want her children "to go through virtually the same experience." Additionally, as noted above, the applicant's wife states she has a severe back condition, and she requires the applicant "to assist [her] in daily tasks." As noted above, no medical documentation has been submitted establishing that the applicant's wife suffers from any medical conditions. Additionally, the record does not establish through documentary evidence that the applicant's wife requires the assistance of the applicant because of her medical conditions.

The applicant's wife states that since the applicant departed the United States, she is "burdened with many responsibilities," without specifying the nature of those responsibilities. She states that she is unemployed and they reside with her brother-in-law. The applicant claims that his brother and wife are expecting another child, and it has become a burden for his brother to care for the applicant's wife and children. The applicant states it is his "duty to take care [sic] and support [his] family." Additionally, he claims that it is difficult for his wife to stay at his brother's house because "as per the Hindu religion and culture, once a girl is married, then it is the responsibility of the husband to take care of her and [their] children." He claims that if he is not allowed to return to the United States, his "family would go on 'welfare'."

The AAO acknowledges that the applicant's wife may be suffering some emotional problems in being separated from the applicant. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the relatives of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and his wife's expenses; however, this material offers insufficient proof that the applicant's wife is unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has not established that he is unable to obtain employment in India and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

The AAO notes that Field Office Director determined that the applicant established extreme hardship to his qualifying relative; however, the Field Office Director denied the applicant's waiver application on discretionary grounds. The AAO overturns the Field Office Director's decision finding extreme hardship and concurs with the negative discretionary finding. The AAO finds that the documentation in the record fails to establish extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief and having concurred with the Field Office Director's negative discretionary finding, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

The AAO notes that the Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.