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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

Date: MAR 1 6 2012 Office: CHICAGO, IL FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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, Chicago, Illinois. 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 Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated August 3, 2011.

On appeal, counsel contends the applicant's husband would suffer extreme hardship if the applicant's waiver application were denied, particularly considering he has recently developed severe back pain and his wife has now been forced to take on all major duties of the household, including becoming the breadwinner of the family.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on August 29, 2001; a copy of the birth certificate of the couple's U.S. citizen daughter; a letter and an affidavit from the applicant; a letter and an affidavit from [redacted] letters from the couple's daughter's doctors; affidavits from relatives; a letter from the couple's daughter's teacher; copies of articles addressing conditions in Pakistan; copies of tax returns, bank account statements and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (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 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.

In this case, the record shows, and the applicant does not contest, that she entered the United States in March 2001 using a B-2 nonimmigrant visitor's visa. The applicant received an extension and was authorized to remain in the United States until March 2002. The applicant remained beyond the date of her authorized stay, departed the United States in late 2005, and was paroled back into the United States in February 2006. The applicant accrued unlawful presence from March 24, 2002, the date after her authorized stay expired, until March 16, 2005, the date she properly filed a Form I-485. Therefore, she is 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 to the United States within ten years of her last departure.

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.

In this case, the applicant's husband, [redacted] contends that he would suffer extreme financial hardship without his wife's contributions to the family. According to [redacted] his wife takes care of the house and their daughter. He states that he would be unable to pay for childcare if his wife departed the United States. In addition, [redacted] states he has no family ties in the United States beyond his wife and daughter. He states he would suffer extreme emotional hardship without them. Furthermore, [redacted] claims his daughter, [redacted] would experience a great culture shock if she moved to Pakistan to be with his wife because she does not speak the language, would be placed in a dangerous culture, and would be a target for Islamic militants. He also contends that when the family visited Pakistan in 2005, [redacted] had to be taken to the hospital for allergic rhinitis, bronchial asthma, and a respiratory tract infection, illnesses she has not suffered in the United States. According to [redacted] the doctors believe she was sick because of environmental changes, including air pollution. In addition, he contends his wife would be unlikely to find work in Pakistan.

After a careful review of the record, the AAO finds that if [redacted] moved back to Pakistan, where he was born, to avoid the hardship of separation from his wife, he would experience extreme hardship. Regarding [redacted] fears that Pakistan is a dangerous environment, the AAO takes administrative notice that the U.S. Department of State has issued a Travel Warning describing the ongoing security concerns in Pakistan. *U.S. Department of State, Travel Warning, Pakistan,* dated February 2, 2012. In addition, with respect to [redacted] concerns about his daughter's health if

she moves to Pakistan, the record contains letters from two physicians corroborating his claims that when his daughter visited Pakistan in 2005, she developed allergic rhinitis, bronchial asthma, and a respiratory tract infection which were caused by environmental changes. Although the applicant's child is not a qualifying relative under the Act, the AAO acknowledges the difficulties of caring for a sick child, particularly in a foreign environment, and the resulting emotional hardship to the applicant's spouse. Considering these unique circumstances cumulatively, the AAO finds that the hardship [redacted] would experience if he returned to Pakistan is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Although the AAO recognizes the challenges of single parenthood, and acknowledges [redacted] contention that he has no other relatives in the United States, there is no evidence to show that his emotional hardship would be beyond what would normally be expected under the circumstances. Regarding the financial hardship claim, although the record contains tax records showing that the couple's total income in 2007 was $23,088, there is no evidence addressing [redacted] regular, monthly expenses, such as rent or mortgage. Although the AAO does not doubt that [redacted] will suffer some financial hardship upon his wife's departure from the United States, without information addressing his regular, monthly expenses, there is insufficient documentation in the record to evaluate the extent of his hardship. With respect to counsel's assertion that [redacted] began experiencing severe back pain in June 2011 and, as a result, has been unable to work as much as he had previously, there is no evidence in the record, such as a letter from a health care professional, to corroborate this claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Regarding the couple's daughter's medical problems, there is no evidence in the record she has suffered from any medical issues when she has been in the United States. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [redacted] would experience amounts to extreme hardship.

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 in 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 fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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.