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



U.S. Citizenship
and Immigration
Services

H6

DATE: OFFICE: NEW YORK, NEW YORK

MAR 21 2012

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B)(v) of the Immigration and Nationality 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 District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the District Director*, dated September 30, 2009.

On appeal, counsel asserts that if the waiver is not granted, the applicant's spouse would suffer extreme hardship of a familial, economic and emotional/psychological nature. See *Counsel's Appeal Brief*, dated November 20, 2009.

The record contains but is not limited to: Form I-290B, counsel's appeal brief and earlier letter; Forms I-601, I-485 and denials of each; two hardship statements; applicant's two statements; UK border agency printout; two psychological evaluations; birth and marriage records; wage and tax records; employment letter; bank and billing statements; and Form I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

...

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that on September 9, 2005, the applicant entered the United States on a B-1 visa and was authorized to stay until December 8, 2005. The applicant filed a Form I-485, application for adjustment of status on September 5, 2008. She departed the United States in December 2008 and re-entered the U.S. on advance parole on January 8, 2009 to continue her adjustment of status. The applicant accrued unlawful presence from December 9, 2005 to September 5, 2008, a period in excess of one year. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her December 2008 departure she was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not dispute this finding, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B) of the Act.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 her children can be considered only insofar as it results in hardship to the qualifying relative. The applicant's spouse 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 record reflects that the applicant’s spouse is a 37-year-old native and citizen of the United States. The applicant’s spouse states that after the waiver application was filed, he was laid off his job as an HVAC mechanic after approximately nine years employment and is, as of November 21, 2009, unemployed. He states that his life would crumble if his wife returns to England, he cannot imagine a future without her, and the prospect of losing her has made it difficult to function in his daily life. ██████████ asserts in a letter dated February 16, 2009, that he interviewed the applicant’s spouse on February 14, 2009. ██████████ diagnoses the applicant’s spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood and asserts that if separated from his wife, his depressive symptoms will become clinically exacerbated and will evolve into Major Depressive Disorder. ██████████ asserts “it will be very difficult to ameliorate his symptoms with either antidepressant medication and/or psychotherapy” but due to the extent of symptoms “I referred him to a psychologist for psychotherapy.” A letter from ██████████ was submitted with a date of February 19, 2008. It appears to be misdated and should be correctly

dated February 19, 2009. Therein, [REDACTED] asserts that the applicant's spouse "has entered individual psychotherapy" and diagnoses him with Major Depressive Disorder. [REDACTED] asserts that preoccupation with the possibility of losing his wife has affected the applicant's spouse's attention and concentration "to the point where he now makes frequent mistakes while working." A letter of the same date (February 19, 2009) from the applicant's employer contains no indications of workplace difficulties. Rather, the applicant's spouse's work ethic, attendance, and knowledge are described as assets and he an "exemplary employee." [REDACTED] asserts that if the applicant's spouse returns to England, his functioning would worsen and "his depression could very well become resistant to treatment." As [REDACTED] provides no explanation related to the depression becoming treatment-resistant, the assertion appears speculative. [REDACTED] recommends the applicant's spouse "see a physician, preferably a psychiatrist, to seek evaluation for an antidepressant medication." The record contains no evidence that the applicant has consulted a physician or psychiatrist or was prescribed/is taking antidepressant medications. While the AAO acknowledges the letters and diagnoses by [REDACTED] the record does not establish that the applicant's spouse would suffer significant psychological hardship beyond that normally associated with separation from an inadmissible loved one.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, counsel asserts that British immigration authorities would likely find the applicant's spouse inadmissible and bar him from joining the applicant. On appeal, the applicant submits a U.K. Border Agency internet printout which asserts that to settle in the U.K. with one's spouse and without time limit, one must show that he can support himself without help from certain public funds and he has the necessary level of knowledge of the English language and life in the U.K. The applicant's spouse states that he has never been to the U.K., has no knowledge of life there, has virtually no savings or other assets, does not see how he could obtain employment, and would have to live with his wife and her elderly mother in the latter's small home. While the AAO recognizes that the applicant's spouse may be required to learn about life in the U.K. in order to settle there for an unlimited time, the evidence in the record is insufficient to establish that he would be inadmissible to the U.K., unable to secure employment, or that he and the applicant would be unable to support themselves without public funds.

The applicant's spouse asserts that he and his wife would like to start a family and he does not believe he would want to have or raise children outside the U.S. The applicant's spouse states that due to injuries he suffered in the past, he believes he may need to have knee replacement surgeries in the future. No supporting documentary evidence has been submitted in this regard. The applicant's spouse states that his mother has been diagnosed with cancer, he and the applicant care for her, and he could not bear to be separated from her. A "Dermatopathology Report," dated March 31, 2008 shows a diagnosis of "Right Popliteal Fossa - Malignant Melanoma, approximately 1.23mm in thickness." The report provides no prognosis or recommended

treatment. While the AAO recognizes that the applicant's spouse will worry about his mother while separated from her through relocation, the evidence does not establish uncommon hardship.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country in which he has never been; close family ties in the U.S. – particularly his mother; ties to friends and community; immigration, employment and economic concerns; and the possibility of needing knee replacement surgery in the future and not wanting to have or raise children outside the U.S. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to the United Kingdom to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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)(v) of the Act, 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.