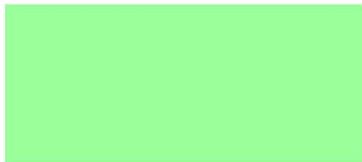


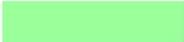


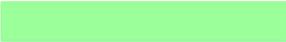
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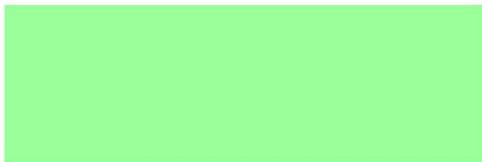
Office: BANGKOK

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the 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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) and the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) were concurrently denied by the Field Office Director, Bangkok, Thailand and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of India who procured entry to the United States without inspection in October 1992. The applicant was ordered deported in absentia in April 1993. In April 2004, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), which was subsequently denied in November 2005. The applicant did not depart the United States until March 25, 2009. 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, 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 under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed. The applicant does not contest these findings of inadmissibility. Rather, he seeks a waiver of inadmissibility under 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 U.S. citizen spouse and three children, born in 1999, 2002 and 2006. In addition, the applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

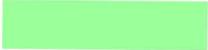
The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The field office director further noted that as the Form I-601 was being denied, the Form I-212 could not be approved and was thus denied concurrently with the Form I-601. *Decision of the Field Office Director*, dated August 11, 2011.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. In addition, the AAO noted that as the applicant was inadmissible under 212(a)(9)(B)(i)(II) of the Act and was not eligible for a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in granting the applicant's Form I-212. The appeal was subsequently dismissed. *Decision of the AAO*, dated January 3, 2013.

On motion, counsel submits the following: a brief; biographical documentation pertaining to the applicant and his family; a duplicate copy of a letter previously provided by the applicant's spouse; and a duplicate copy of a report provided by [REDACTED] based on an interview conducted with the applicant and his family in May 2006. The entire record was reviewed and considered in arriving at a decision on the motion.

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

- (A) Certain alien previously removed.-



(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(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 [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, the children or the applicant's spouse's relatives 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

With respect to remaining in the United States while the applicant continues to reside abroad due to his inadmissibility, on appeal the AAO first noted that although a psychosocial evaluation had been provided, said evaluation, written more than five years prior to the submission of the appeal, did not establish that the emotional hardship the applicant’s spouse and children were currently experiencing as a result of the applicant’s inadmissibility were beyond the hardships normally experienced as a result of long-term separation from a spouse or parent due to inadmissibility. Moreover, the AAO stated that it had not been established that the applicant’s spouse would be unable to travel to India, her native country, to visit her husband. Further, the AAO referenced that the record established that the applicant’s spouse had a support network in the United States, including her mother, numerous siblings and other family members and their community and it had thus not been established that they would be unable to assist the applicant’s spouse, emotionally or financially. As for the financial hardship referenced, the AAO found that no documentation had been provided establishing the applicant’s and his family’s current income and expenses and assets and liabilities and their needs to establish that without the applicant’s physical presence in the United States, the applicant’s spouse would experience financial hardship. Moreover, it had not been established that the applicant was unable to obtain gainful employment in India that would permit him to assist his wife and children financially in the United States. Finally, with respect to the applicant’s spouse’s assertion that she was now the wage earner for the family, the AAO noted that the applicant’s brother-in-law has been running the applicant’s business since the applicant’s departure. *Supra* at 5.

On motion, counsel re-submits an undated affidavit from the applicant’s spouse and a report from [REDACTED] based on an interview with the applicant and his family in May 2006. These documents,

already reviewed by the AAO when adjudicating the appeal in 2013, do not address the issues raised by the AAO in its dismissal. Moreover, with respect to financial hardship, as previously noted by the AAO when it dismissed the appeal, no documentation has been provided on motion establishing the applicant's and his spouse's current income and expenses and assets and liabilities and their overall financial needs to support the assertion that without the applicant's physical presence in the United States, the applicant's spouse would experience financial hardship. Nor has counsel provided any documentation on motion establishing that the applicant is unable to obtain gainful employment in India that would permit him to assist his wife and children financially in the United States.

As for the applicant's spouse's support network, referenced by the AAO, counsel states that relying on said support network has caused the applicant's spouse hardship as her mother is sick and she cannot rely on a support network to care for her three young children. *See Brief in Support of Motion*, dated January 25, 2013. No supporting documentation has been provided on motion outlining the current hardships the applicant's spouse is experiencing as a result of being sole caregiver to her three young children. 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)). Nor has any documentation been provided regarding the applicant's mother's health and what hardships her health conditions are causing the applicant's spouse.

Further, although counsel references on motion that it is burdensome to travel to India to visit the applicant, with or without the children, the AAO notes that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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). As such, on motion counsel has failed to establish, based on a totality of the circumstances, that the applicant's spouse would experience extreme hardship were she to remain in the United States while the applicant continues to reside abroad as a result of his inadmissibility.

In regards to relocating abroad to reside with the applicant, the AAO found on appeal that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility. As such, this criterion will not be re-addressed on motion.

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.

On motion, the record 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.

As noted above, in its decision dismissing the appeal of the denial of the applicant's Form I-601, the AAO determined that no purpose would be served in granting the Form I-212. *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 and is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in granting the applicant's Form I-212.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The motion will be granted and the prior decision of the AAO is affirmed.