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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

DATE: JAN 25 2013

Office: BANGKOK, THAILAND

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand. The applicant appealed the denial but the appeal was remanded by the Administrative Appeals Office (AAO) to the District Director to review as a Motion to Reopen because it was untimely filed. The District Director denied the Motion to Reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal of that denial. The appeal will be dismissed.

The applicant is a native and citizen India. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of his last departure. He is married to a United States citizen. He 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).

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 25, 2010.

The applicant appealed the District Director's denial but the appeal was rejected as untimely by the AAO and returned to the District Director for consideration as a motion. The District Director denied the Motion to Reopen based on the applicant's failure to establish that a qualifying relative would experience extreme hardship. The applicant has appealed that denial, and counsel states on appeal that the District Director's decision was in error and that the applicant's spouse will experience extreme hardship. *Form I-290B*, received on August 30, 2011.

The record includes, but is not limited to: counsel's brief; statements from the applicant's spouse; a statement from [REDACTED], dated August 3, 2011, pertaining to the applicant's spouse; medical records pertaining to the applicant's parents; copies of residential mortgage documents; statements from the applicant's children as well as other family members and acquaintances of the applicant; copies of tax returns and pay records for the applicant's spouse; and photographs of the applicant, his spouse and their family. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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-

....

(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. . . .

(b)(6)

The record indicates that the applicant entered the United States without inspection on or about September 9, 1996. Although two Form I-130 petitions were filed on the applicant's behalf prior to the current approved petition, they were denied and the applicant remained in unlawful status until he departed the United States in December 2004. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act, until December 2004, and is now seeking admission within 10 years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a 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-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*, 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.

Counsel asserts on appeal that the applicant's spouse would experience emotional and psychological hardship if she had to relocate to India. *Brief in Support of Appeal*, received August 30, 2011. Counsel asserts that the applicant's spouse's parents have serious medical conditions, including a recent heart attack by her mother, and that having to relocate to India would result in separating from her parents at a critical time in their lives.

The applicant and his spouse have also submitted statements asserting that the conditions in India would result in additional hardship factors on both the applicant's spouse and their children. *Supplemental Declaration of the Applicant's Spouse*, dated August 2, 2011. The applicant's spouse discusses the medical conditions of her parents, and notes that she is required to take several

medications. The applicant's spouse also asserts that she owes money on her home, has significant credit debt and is unable to meet her monthly financial obligations.

The record includes medical records for the applicant's parents, including an Operative Report for a Cardiac Catheterization, dated June 8, 2011. This documentation is sufficient to demonstrate that her parents have serious medical conditions, and that separating from her mother to relocate would result in uncommon emotional hardship. In addition, the AAO notes that the applicant does have two children, and that having to relocate abroad with two children would result in an additional physical and emotional burden on the applicant's spouse.

Although the applicant has submitted country conditions materials and discusses the difference in quality of life between the U.S. and India, the AAO does not find these materials sufficiently probative of the specific conditions under which the applicant's spouse would be required to reside. Nonetheless, when having to relocate two children is considered in conjunction with the overall conditions noted by State Department's Country Profile, the AAO considers the record to support significant challenges due to relocation.

When the hardships upon relocation are considered in the aggregate, the AAO finds the record to establish that the applicant's spouse would experience uncommon hardships rising to the level of extreme hardship upon relocation to India.

With regard to hardship due to separation, counsel has asserted that the applicant's spouse is experiencing emotional and financial impacts rising to the level of extreme hardship. *Brief in Support of Appeal*, received August 30, 2011. Counsel explains that the applicant's spouse is experiencing emotional hardship in the form of depression and that she is unable to meet her financial obligations.

The record contains copies of a psychological evaluation of the applicant's spouse by [REDACTED] dated August 3, 2011. The report diagnoses the applicant's spouse with Major Depressive Disorder. Based on this and other documentation in the record, the AAO will give consideration to the emotional impact on the applicant's spouse due to separation.

The record also contains tax returns, pay stubs, residential property and mortgage documents and copies of utilities and bills paid for by the applicant's spouse. This evidence indicates the applicant's spouse owns a property and three automobiles, and she claims two children as dependents on her tax returns. While the record contains a single mortgage statement indicating that she was a month late in making a payment, there is nothing else which indicates that the applicant's spouse is in jeopardy of losing her property or of having any utility services disconnected. The evidence demonstrates that the applicant's spouse has financial obligations, but the AAO does not find the evidence sufficient to demonstrate that her financial burdens are uncommon, or imminently threatening her current lifestyle in the United States. In this case, the evidence fails to demonstrate that any financial impact on the applicant's spouse rises above what is commonly experienced.

The record also contains statements from the applicant's children attesting to the emotional impacts of being separated from their father, and statements from acquaintances of the applicant attesting to his moral character.

While the AAO recognizes there is evidence in the record indicating that the applicant's spouse may experience some degree of emotional hardship, there is insufficient evidence to demonstrate that she will experience an uncommon financial impact, or that she will experience other hardships which combined with the emotional impact rise to the level of extreme hardship. The AAO does not find the record sufficiently documented to establish that the applicant's spouse will experience extreme hardship due to separation.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 rests 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.