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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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**DISCUSSION:** The waiver application was denied by the Field Office Director, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan. He 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 one year or more and seeking admission within 10 years of his last departure. He is married to a United States citizen and 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 Field Office 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 August 25, 2011.

On appeal, counsel for the applicant contests the Field Office Director's conclusions and asserts that the applicant's spouse will experience emotional and financial impacts rising to the level of extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received on October 3, 2011.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; a statement from [REDACTED] dated March 10, 2011; a statement from [REDACTED] LMSW, regarding the applicant's son; a copy of an income tax return for 2010; and documentation filed in relation to the applicant's Forms I-130, Petition for Alien Relative, and DS-230, Application for Immigrant Visa and Alien Registration. 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. . . .

The record indicates that the applicant entered the United States with a non-immigrant visa in June 1998, and was authorized to remain until July 14, 1998. The applicant remained beyond his authorized period of stay, and an Immigration Judge granted voluntary departure on September 16, 2005. The applicant departed in accordance with the voluntary departure order on December 6, 2005.

Therefore, the applicant was unlawfully present in the United States for over a year from June 1998 until September 16, 2005, 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 child 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 for the applicant asserts on appeal that the applicant’s spouse will experience emotional and financial impacts rising to the level of extreme hardship due to separation from the applicant. *Brief in Support of Appeal*, received October 3, 2011.

Counsel asserts that the applicant’s spouse will experience emotional hardship due to separation from the applicant, and cites to a psychological assessment of the applicant’s spouse by [REDACTED] and a statement from [REDACTED]. The statement from [REDACTED] dated March 10, 2011, is brief, and simply states she is being treated for depression. As noted by the Field Office Director, [REDACTED] statement does not clearly distinguish the impact on the applicant’s spouse from the emotional consequences typically experienced due to separation. The statement from [REDACTED] dated March 12, 2011, diagnoses the applicant’s spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood. Based on this evidence the record indicates the applicant’s spouse will experience an emotional impact due to separation from the applicant. This will be considered when aggregating the impacts on the applicant’s spouse due to separation.

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Counsel also asserts on appeal that the applicant's son is suffering emotionally due to the applicant's absence, and points to evidence in the record discussing the emotional impacts on the applicant's son. As discussed above, children are not qualifying relatives in these proceedings, nonetheless, impacts on them may be relevant if they result in hardship to a qualifying relative. In this case, evidence in the record indicates the applicant's son has visited a therapist for feelings of depression. A statement from [REDACTED], states that the applicant's son suffers from Adjustment Disorder with Anxiety, but that he has showed improvement in coping with the impact. There is also a School Activities statement which indicates the applicant's son is in speech and language therapy for English, but that he may participate in all activities. Other school records indicate that he is experiencing mild withdrawal, but recommended against counseling. While this evidence indicates the applicant's son may be experiencing some emotional impacts, it is not clear that the impact on him is uncommon, or that his difficulty rises to such a degree that the applicant's spouse will experience significant additional hardship.

The applicant's spouse has submitted a statement asserting that she will experience extreme emotional and financial hardship due to the applicant's inadmissibility. *Statement of the Applicant's Spouse*, dated February 22, 2011.

Counsel asserts that the Field Office Director failed to take into account that, according to a 2010 tax return submitted into the record, the applicant's spouse would not have enough money to survive in New York City. The AAO notes that the applicant has already departed the United States, and the applicant's spouse has not made clear how she has supported herself since that time. There is no evidence of accumulated debt, housing difficulties, or unmet need, or any other evidence of the financial impact of the applicant's departure. Further, the applicant has not established that his wife's circumstances require her to incur the high cost of residence in New York City. While the tax return submitted indicates the applicant's spouse reported only \$8,500 in income at that time, there is no other evidence in the record indicating that she is incapable of working or finding employment. In addition, the applicant's spouse has an advanced degree, potentially improving her position in the employment marketplace.

As noted by the Field Office Director, the applicant's spouse has relatives who reside in the United States, a resource that would help mitigate the impacts of the applicant's departure. Counsel asserts on appeal that the applicant's spouse is over the age of 21 and the applicant's spouse's parents have no moral obligation to care for her. However, there is no evidence in the record, such as a statement or other evidence, that the applicant's spouse's family members would be unable to unwilling to assist her if the applicant is removed.

Counsel asserts that the economy has affected the applicant's spouse's ability to get a job, but this is not corroborated by any evidence that she has searched for a job, and does not distinguish the impact on her from what other qualifying relatives would experience. The AAO does not find the record to establish that the applicant's spouse would experience any uncommon financial impact.

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When the emotional and financial challenges of the applicant's spouse are considered in the aggregate with the common impacts of separation, the AAO does not find the hardships to rise above the common impacts of separation to a degree of extreme hardship.

With regard to hardship due to relocation, counsel asserts that the dangerous social and political environment in Pakistan would result in extreme hardship to the applicant's spouse. *Statement in Support of Appeal*, received October 3, 2011. The applicant's spouse has submitted a statement asserting that she is afraid of her prior husband who resides in Pakistan, and fears that he will attack her and attempt to disrupt her life. She also asserts that her child would not have access to the educational opportunities in Pakistan as they would in the United States.

In this case, there is no evidence to demonstrate the fears of the applicant's spouse are reasonable. There are no country conditions materials to corroborate counsel's assertions that Americans are being specifically targeted, and nothing which indicates that the applicant's spouse would be perceived as American and targeted because of that perception.

There is insufficient evidence to support the applicant's spouse's assertions or counsel's assertions of hardship impacts experienced upon relocation. As such, the AAO does not find the record to demonstrate that a qualifying relative will experience extreme hardship upon relocation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is prohibited from residing in the United States. The AAO recognizes that the applicant's spouse may experience emotional impacts. This assertion, however, is a common hardship associated with removal and separation, and does not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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.