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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: MAR 22 2013 Office: NEW DELHI, INDIA File:

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:

SELF-REPRESENTED

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 Field Office Director, New Delhi, India. 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 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 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 June 19, 2012.

On appeal, the applicant's spouse states that her situation has deterioated and asks that the applicant's appeal be given favorable consideration. *Form I-290B*, received on July 17, 2012.

The record includes, but is not limited to: statements from the applicant's spouse; statements from the applicant; pictures of the applicant and his spouse; statements from friends and family members of the applicant; copies of medical records pertaining to the applicant's spouse; copies of insurance policies, phone bills and bank statements; educational and career certificates for the applicant; an ExitCare patient information form on Ovarian Cysts issued to the applicant's spouse; handwritten prescription forms discussing the medical history of the applicant's spouse; and a copy of the applicant's spouse's birth certificate. 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-
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> . . . .
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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.

The record indicates that the applicant entered the United States as a C-1 crewman on May 25, 2007, but left his ship, and remained until he departed in August 2008. Therefore, the applicant was unlawfully present in the United States for over a year 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 any 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-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 applicant's spouse asserts on appeal that she would suffer extreme physical and financial hardship if she were to relocate to India with the applicant. *Statement in Support of Appeal*, received July 17, 2012. She states that she has a problem with ovarian cysts and a heart murmur, and that she would be unable to find adequate medical care in India. She explains that she was born in the United States, has a job, close family members and other community ties in the United States and does not have any family or support network in India. She states that she does not speak the language and would have a difficult time trying to find employment and cope with the country conditions in India. In addition, she states, she would have to separate from her mother and other family members and friends in the United States if she relocated to India.

The record contains documentation supporting the fact that the applicant's spouse is currently employed. There is a statement from the applicant's mother which details the emotional impact on the applicant's spouse and states that she has had to move in with her due to health problems and the inability to support herself financially without the assistance of the applicant.

The record also contains some medical documentation in the form of patient care reports, exam results and a post-operative report. While the medical documentation in the record indicates that she has attended a doctor for ovarian cysts, and that a benign mytro-valve prolapse has been detected in

her heart, they do not indicate that she is unable to care for herself physically or maintain a regular lifestyle due to her conditions. Nonetheless, the AAO recognizes that having to sever ties with the doctors and health care professionals familiar with her history and background would disrupt the continuity of her treatment. As such, the AAO will consider this when aggregating the impacts on the applicant's spouse due to relocation.

When the impacts on the applicant's spouse due to relocation, including the presence of medical conditions and having been born and raised her entire life in the United States, are considered in the aggregate with other common impacts of relocation, the AAO finds that the impacts on the applicant's spouse would rise to the level of extreme hardship.

With regard to hardship upon separation, the applicant's spouse has asserted that she is experiencing emotional and financial hardship due to separation from the applicant. *Statement in Support of Appeal*, received July 17, 2012. She states that she is suffering emotionally due to her separation, feels depressed and anxious, and is concerned that she won't be able to have children or start a family without the applicant.

As noted above, the record indicates that the applicant's spouse suffers from medical conditions, but the evidence in the record is not sufficient to demonstrate that these conditions have such an impact on her that being separated from the applicant would result in uncommon hardship. There are no doctor's statements which explain the degree or severity of her conditions, and nothing in the record which indicates that they are not controlled with medication and other treatment or that they impact her on a daily basis.

With regard to financial hardship, the record contains evidence that the applicant's spouse is employed at a fast food restaurant, and copies of bills, bank statements and other documentation indicating the presence of financial obligations. This evidence, however, does not provide a complete picture of the applicant's spouse's financial status. The record indicates that she is residing with her mother, mitigating the financial impact of the applicant's departure. There is nothing which indicates that the applicant's spouse is delinquent on any of her financial obligations or that she is unable to meet her financial obligations with her current employment.

The record contains statements from friends and family members of the applicant's spouse. These statements describe the emotional impact on the applicant's spouse. While the AAO acknowledges the sentiment of these statements and the emotional suffering of the applicant's spouse, it does not find the record to contain sufficient evidence distinguishing the emotional impact on the applicant's spouse from those which commonly impact the relatives of inadmissible aliens who remain in the United States.

When the hardship impacts due to separation are considered in the aggregate, the AAO does not find them to rise above the common impacts to a degree of extreme hardship. As such, the AAO must conclude that the applicant has failed to establish extreme hardship to his spouse 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 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 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(s) in this case.

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.