



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

DATE: **NOV 18 2013**

Office: DETROIT

[Redacted]

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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 (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,

f-

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan. 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 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The field office director found 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. *Decision of the Field Office Director*, dated May 14, 2013.

On appeal, counsel submits the following: a brief; medical and mental health documentation pertaining to the applicant's spouse; and a copy of a redacted non-precedent AAO decision from December 2010. The entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year...and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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...

In regard to the field office director's finding of inadmissibility for unlawful presence, the record establishes that the applicant entered the United States with a valid C1/D nonimmigrant visa in October 2003 and remained beyond the period of authorized stay. The applicant did not depart the United States until March 2008. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year.

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 or their child, born in 2012, 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-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 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.

The applicant’s U.S. citizen spouse contends that she will suffer emotional, physical and financial hardship were she to remain in the United States while her spouse relocates abroad due to his inadmissibility. In a declaration, the applicant’s spouse explains that her husband is her better half, he completes her in every aspect, and without him she would experience emotional distress. She further explains that she suffers from joint aches and pains, most notably in her hands, knees and back, and she thus needs her husband to help care for their child when she is physically unable to do so. Moreover, the applicant’s spouse maintains that her child will experience hardship as a result of long-term separation from her father. In addition, the applicant’s spouse explains that juggling work and caring for her daughter will cause her to burn out, which in turn could affect her work performance and possibly result in loss of her job and acute financial distress. Finally, the applicant’s spouse explains that she bought a house that her brother lives in and is also responsible for her own apartment, car insurance, private health insurance and life insurance. She states that were her husband to relocate abroad, she would have to pay all the bills and in addition, day care for her child, and such a predicament would cause her financial hardship. [REDACTED] dated March 4, 2013.

To begin, in regard to the medical hardship referenced, a letter has been provided from [REDACTED] [REDACTED] references that the applicant's spouse has wrist pain that has gotten better since the applicant has been carrying the baby. [REDACTED], dated May 23, 2013. The letter does not specify the specific medical condition, the short and long-term treatment plan, the severity of the situation and what hardships the applicant's spouse would experience were her husband unable to assist her with the care of their child. Further, although Dr. [REDACTED] references that the applicant's spouse has become very emotionally distraught over the potential deportation of her husband, the record does not establish that said hardships are beyond the normal hardships associated when a spouse relocates abroad due to inadmissibility. Nor has it been established that the applicant's spouse would be unable to travel to India to visit her husband.

As for the financial hardship referenced, no documentation has been provided on appeal establishing the applicant's spouse's expenses and assets and liabilities to establish that the applicant's relocation would cause his wife financial hardship. The AAO notes that in 2011, the applicant's spouse declared income of over \$175,000. Nor has it been established that the applicant's spouse would be unable to properly care for herself and her child while continuing her work as a physician. 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)). Alternatively, it has not been established that the applicant would be unable to obtain gainful employment abroad that would permit him to assist his wife financially should the need arise. Finally, the AAO notes that the applicant's spouse has a support network in the United States, including her parents and sibling. It has not been established that the applicant's spouse's relatives would be unable to provide needed assistance to the applicant's spouse. It has thus not been established that the applicant's spouse would experience extreme hardship were she to remain in the United States while her spouse relocates abroad as a result of his inadmissibility.

With respect to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse details that she was born and raised in the United States and only speaks English. She contends that she would have great difficulty communicating with the people of India, as there are over a thousand dialects spoken. The applicant's spouse further contends that she is unfamiliar with the customs and culture in India which would lead to loneliness and despair. In addition, the applicant's spouse details that, were she to relocate to India, she would not be able to practice medicine since she obtained her degree in the United States and would have to thus go through the whole process of recertification and licensing. The applicant's spouse also notes that she owns the home where her brother resides and, were she to relocate to India, she would not be able to keep up with the mortgage and utility bills and would be at risk of bankruptcy and foreclosure. Further, the applicant's spouse references the problematic country conditions in India, including congestion, scarcity of clean water, unsanitary food handling, pollution, overpopulation and corruption. Finally, the applicant's spouse maintains that her parents are old and being so far away from them would cause her hardship. *Supra* at 3-5. The record reflects that the applicant's U.S. citizen spouse was born and raised in the United States and is unfamiliar with the language, culture and customs of India. Were she to relocate abroad to reside with her husband as a result of his inadmissibility, she

would have to leave her home, her brother, her elderly parents, her community and her gainful employment as a physician, earning \$80.00 an hour, and she would be concerned about her safety and well-being in India. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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.

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 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 and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rises to the level of "extreme" as contemplated by statute and case law.

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 appeal is dismissed.