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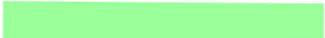
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
20 Massachusetts Avenue NW  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



DATE: SEP 05 2013

Office: BANGKOK

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. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Bangkok, Thailand, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. 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 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 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. His wife is a lawful permanent resident, and he is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the District Director*, August 3, 2011. On appeal, the AAO found that the applicant had not established a qualifying relative would suffer extreme hardship either by virtue of separation from the applicant or by virtue of relocating to live with the applicant. *Decision of the AAO*, December 24, 2012.

On motion, the qualifying relative contends the AAO erred in not finding she would suffer extreme hardship were the applicant unable to reside in the United States. In support of the motion, the qualifying relative provides a brief and several new documents, including an updated hardship statement; a loan modification letter; a pay stub; and information regarding school curriculum and fees in India. The record includes the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and 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.

....

(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....

The AAO previously noted that the applicant entered the United States without admission or parole on July 15, 1992 and filed an asylum application on October 30, 1992. Concurrent with denial of the asylum application on July 26, 2000, an Immigration Judge denied the applicant's request for withholding of removal or for voluntary departure and issued a removal order. After an appeal of this decision was dismissed on December 6, 2002, the applicant was scheduled to leave the country on January 27, 2004. Meanwhile, he married the qualifying relative herein on August 8, 2003, then failed to appear for his arranged departure, and remained in the United States until removed on July 18, 2008. He accrued unlawful presence from December 6, 2002 until his removal in July 2008.

The record shows the district director found the applicant inadmissible for accruing one year or more of unlawful presence and, on appeal, the AAO likewise found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, but also for having been ordered removed under section 240 of the Act. We noted that, in addition to requiring a waiver to immigrate before July 19, 2018, the applicant must obtain consent to reapply for admission<sup>1</sup> due to his removal under a Final Order of Deportation.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 wife 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,

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<sup>1</sup> This appeal is limited to denial of the application for waiver of unlawful presence under section 212(a)(9)(B)(v) of the Act. The applicant has not appealed denial of his Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212).

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 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. INS.*, 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.

New evidence fails to show that the qualifying relative will suffer extreme hardship if the applicant is not granted a waiver of his inadmissibility. Regarding hardship from separation, the new documents include no evidence that the applicant’s wife has incurred emotional hardship from her husband’s absence beyond the normal and typical impact of separation from a loved one. As we previously stated, there is nothing on record to substantiate the claim that her husband’s absence has caused her any specific physical or psychological harm or that her son’s relationship to his stepfather is any different than the usual bond of affection between a parent and child. See *AAO Decision*, December 24, 2012. Further, the qualifying relative indicates that she is presently living with her husband in India and thus not separated from him, but that her son returned to the United States after only a month, and now lives with a maternal aunt. She claims that choosing to live with the applicant at the expense of being separated from her son causes her worry and loss of sleep, but fails to provide any documentation showing that these consequences of her choice to remain with the applicant go beyond the usual result of inadmissibility or removal. 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)). While it is possible that the applicant's wife may return to the United States and be separated from her husband again, there is no evidence of hardship that will result from such a prospective separation on which to change our prior determination on this issue.

To support the claim that the applicant's absence imposed a financial burden, the qualifying relative offers evidence she was denied a mortgage modification, as well as a wage statement purportedly showing her final earnings before she left her U.S. job. These documents fail to establish the qualifying relative's degree of financial distress, as they do not show the amount of her debt, the financial resources available to her, or what alternative solutions the lender has presented to her (as stated in its letter). The evidence reflects, moreover, that despite claiming to have been behind on mortgage payments since September 2012, she chose to leave her job in November 2012 at about the same time she failed to obtain a loan modification. We noted in our prior decision that financial evidence was inconclusive regarding each spouse's relative contribution to household income, the original mortgage and property deed were not provided, and there was no evidence of other household expenses or that her husband was unable to support himself and thus represented a financial burden. And, now residing in India, the qualifying relative provides no evidence of her income, or that she or the applicant has sought employment. She claims inability to afford private school for her son in India and states her son has returned to the United States, but the record does not contain sufficient evidence of their overall financial situation, including current income and living expenses.

Documentation in the record, when considered in its totality, does not show that the applicant's wife is suffering extreme hardship due to the applicant's inability to reside in the United States. Although we recognized that his wife would endure hardship, we note that this factor has been mitigated now that they are no longer separated. Absent evidence that she will experience hardship upon future separation, the AAO concludes the applicant has failed to establish extreme hardship to a qualifying relative as required under the Act.

Regarding relocation, the evidence likewise fails to establish that moving to India would impose extreme hardship on the qualifying relative. The record reflects that the applicant's wife has moved to India and is living with the applicant. While counsel contended on appeal that moving back to India would be too difficult for the qualifying relative, and where the applicant's wife claimed that relocation would bring limited healthcare options and poor job prospects due to her education level, there is no evidence she has sought employment or lacked necessary care. The record contains no indication that the qualifying relative has experienced any of the potential adverse consequences claimed on appeal, although she asserts her son was unable to be enrolled in public school due to lack of language fluency and that she was unable to afford private school tuition. The AAO notes that the school documents submitted do not establish that the school tuition is beyond the qualifying relative's ability to pay, as the record does not indicate the limits on what he and his wife can afford. While we are sensitive that relocating was difficult for the applicant's stepson, there is insufficient evidence to show that sending him to live with his aunt is resulting in hardship to the applicant's spouse that is beyond the common results of removal or inadmissibility.

We noted previously that the applicant offered no documentation of any challenges his stepson would face in moving overseas, and that there was no indication whether he had an option to remain in the United States. *See AAO Decision*. As the qualifying relative states that her son is now living with her sister in the United States, his ability to remain here is no longer in question. The record reflects that the qualifying relative moved back to India in the fall of 2012, after having lived here for 13 of her 54 years, and that she and the applicant are from the same region of India. Other than her former employment and evidence that that her children live here, she demonstrates few ties to the United States. There is no evidence showing she has had difficulty reintegrating to her native land. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship were she to relocate abroad.

The documentation on record, when considered in its totality, reflects that the applicant has not established his wife will suffer extreme hardship if he is unable to live in the United States as a permanent resident. Her situation is typical of individuals separated as a result of removal or inadmissibility, she chose to address it by reuniting with the applicant in their native India, and the AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

In application proceedings, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

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