



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 02 2014

OFFICE: WASHINGTON

FILE: [Redacted]

IN RE: [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 Field Office Director, Washington, D.C. denied the waiver application. A subsequent appeal and motion to reopen and reconsider were dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant is a native and citizen of Pakistan 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 remain in the United States with his U.S. citizen spouse.

The Field Office Director determined that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated May 18, 2010. On appeal, the AAO also determined that the applicant failed to demonstrate extreme hardship to a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated February 11, 2013. On motion, the AAO again determined that the applicant failed to demonstrate the requisite extreme hardship to a qualifying relative and affirmed its prior decision. *See Decision of the AAO*, dated June 4, 2013.

On a second motion to reopen and reconsider, counsel for the applicant asserts that the applicant is the sole provider for a spouse with medical ailments that prevent her from working. Counsel further asserts that the applicant's spouse cannot relocate to Pakistan because she only speaks English and would face dangerous country conditions, including inadequate medical care, upon relocation.

In support of the motion to reopen and reconsider, the applicant submitted a previously submitted medical letter concerning the applicant's spouse and background country conditions for Pakistan. The entire record was reviewed and considered in rendering a decision on the motion.

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

(B) ALIENS UNLAWFULLY PRESENT.-

- (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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant is a native and citizen of Pakistan who entered the United States without admission or parole in October or November 1988. After being placed in deportation proceedings, the applicant was granted voluntary departure on [REDACTED] 1988 with authorization to depart by [REDACTED] 1988. The applicant failed to depart by that date and departed from the United States in June 1998. The applicant accrued unlawful presence in the United States from the effective date of the unlawful presence provisions, April 1, 1997, until his departure in June 1998. The applicant subsequently entered the United States as a nonimmigrant on May 2, 2001. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on motion.

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 her 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.

The record reflects that the applicant is a 47-year-old native and citizen of Pakistan. The applicant’s spouse is a 45-year-old native and citizen of the United States. The applicant is residing with his spouse and stepchild in [REDACTED]

Counsel for the applicant asserts that the applicant is the sole financial provider for his family in the United States. Counsel further asserts that the applicant’s spouse is unable to work due to medical issues and receives care from the applicant. The record contains an affidavit from the applicant’s spouse stating that the applicant is the only bread winner in the family and that she and her daughter are financially dependent upon him. The applicant’s spouse further states that she may have to seek public assistance in the absence of the applicant. The record also contains a

letter from a physician, dated September 17, 2009, stating that the applicant's spouse has spinal stenosis, morbid obesity, arthritis, and swollen legs; so that she is not advised to stand or walk for long hours and is unable to work.

The record reflects that the applicant's spouse was previously employed as a bookkeeper for a construction company. There is no information concerning whether the applicant's spouse was required to stand or walk for long hours in her bookkeeper position. There is also no indication that the applicant's spouse would be medically unable to be employed in a position that would allow her to sit for long periods of time. Counsel for the applicant also asserts that the applicant provides care for the applicant's spouse, but absent a description in plain language of any treatment or family assistance needed, the AAO is not in the position to reach any relevant conclusions.

The record contains financial documentation concerning the applicant and his spouse, including tax returns dated 2007 and previous years. The record does not contain any updated financial documentation, and there is no indication as to whether the applicant's spouse's family members, including five siblings, could or would provide financial assistance, as needed. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). In the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's spouse would suffer from hardship due to separation from the applicant that is beyond the common results of the inadmissibility or removal of a spouse. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is only available in cases of extreme hardship, and not in every case where a qualifying relationship exists.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Pakistan to reside with the applicant because she and her child would be deprived of the rights and opportunities they receive in the United States, including adequate health care, education, and fundamental and religious rights. Counsel further asserts that the applicant's spouse only speaks English, her daughter does not speak Urdu, and they would leave their family members behind upon relocation. It is noted that the applicant's stepchild is not a qualifying relative in the context of this application so that any hardship she would experience will be considered only insofar as it affects the applicant's spouse. It is also noted that English is an official language of Pakistan.

The U.S. Department of State Country Specific Information for Pakistan, dated May 23, 2013, states that adequate basic non-emergency medical care is available in major cities of Pakistan. It is noted that the physician's letter concerning the applicant's spouse does not indicate the need for follow-up medical care for the applicant's spouse's ailments. As noted in previous AAO decisions, counsel contends that the applicant's spouse and child would face targeting in Pakistan, as Christians, but the record does not contain any supporting documentation concerning their religious affiliation.

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However, the record also reflects that the applicant's spouse is a native of the United States with five siblings in the United States, one of whom submitted an affidavit on behalf of the applicant. It is noted that the U.S. Department of State has issued a travel warning for Pakistan, dated [REDACTED] 2013, stating that U.S. citizens should defer all non-essential travel to Pakistan and that terrorist attacks frequently occur throughout the country.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Pakistan. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 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. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this waiver as a matter of discretion.

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 motion to reopen is granted and the prior decision of the AAO dismissing the appeal is affirmed.