



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 12 2015**

FILE:

APPLICATION RECEIPT:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the application. 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year and again seeking admission within three years of his last departure from the United States. The applicant is the beneficiary of a K-1 Fiancé(e) Petition (Form I-129F) filed on his behalf by a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The director found that the applicant had established extreme hardship to his qualifying relative if she were to relocate abroad to reside with the applicant, but that the applicant failed to establish that his fiancé would experience extreme hardship as a consequence of separation from him. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. See *Decision of the Director* dated October 27, 2014.

On appeal the applicant asserts that he has submitted documents to prove extreme hardship and that his fiancée is already suffering extreme emotional hardship due to their separation. In support of the appeal the record contains statements from the applicant and his fiancée and medical documentation for his fiancée. The record contains previous statements from the applicant and his fiancé, statements from the parents and sister of his fiancé, medical documentation, financial documentation, and evidence submitted in conjunction with the fiancé petition. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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-

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(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

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.

The record reflects that the applicant entered the United States on December 21, 2011, as a B-2 visitor with authorization to remain until June 20, 2012, and departed on February 13, 2013, thus accruing unlawful presence from the expiration of his period of authorized stay until voluntarily departing. There is no evidence that the applicant applied for or was granted an extension of stay in the United States. Based on this information the director found the applicant inadmissible for having accrued unlawful presence for a period of more than 180 days but less than one year. The applicant has not contested the finding of inadmissibility.<sup>1</sup>

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, or a U.S. citizen K visa petitioner. The applicant's U.S. citizen fiancé 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

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<sup>1</sup> Pursuant to section 212(a)(9)(B)(i)(I) of the Act, the applicant is inadmissible until February 13, 2016, three years from the date of his departure from the United States.

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. *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.

As noted, the director found that the applicant had established extreme hardship to his qualifying relative if she were to relocate abroad to reside with the applicant due to his inadmissibility. Therefore this criterion will not be addressed on appeal.

The applicant asserts that his fiancé is suffering hardship because since meeting they had always been together, they have much in common, and he is supportive of her. The fiancé states that separation from the applicant has been an enormous strain, that she depends on him in every aspect, and that she cannot imagine living without him any longer. The fiancé states that she depends on the applicant and feels lost without him as he is dedicated to family and is generous.

The record contains little detail and no supporting evidence concerning the emotional hardship the applicant's fiancé states she is experiencing due to separation from the applicant, the severity of the hardship, the effects on her daily life, or how such emotional hardships are outside the ordinary consequences of separation. 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)).

The fiancé states that she takes care of ailing family members. A letter from her mother states that due to health problems the fiancée's parents depend on her assistance and that she needs the applicant with her. A letter from a sister states that she also depends on the applicant's fiancée due to her own health problems resulting from gastric bypass surgery, a pending malpractice lawsuit against the surgeon who performed the surgery, and needed social security insurance paperwork. Documentation submitted to the record shows that the applicant's fiancée has been given power of attorney for her sister. Although the record establishes that the fiancé provides assistance for her family, the record does not show how the applicant's physical presence is necessary for his fiancée to assist her family or how his absence affects the fiancée's ability to provide this assistance.

The applicant's fiancée asserts that she suffers hypertension, which is aggravated by the denial of the applicant's waiver, that it causes her headaches and stress, and that her deteriorating health problems could be life threatening. She states that hypertension is a "silent killer" and can cause a stroke, leading to paralysis and speech problems. Medical documentation includes records from India that show the fiancée visited a nephrologist and a kidney center in March 2014, however these documents provide no detail of any condition that the fiancée has, and the record contains no additional medical documentation to establish that the fiancée has a medical condition for which any treatment would require the applicant's physical presence in the United States.

The applicant states that he cannot send money from India because it is costly to do so, but that when he comes to the United States he will take financial responsibility for his fiancée so they can have a family, house, and business. The fiancée also states that it is difficult for the applicant to financially support her from abroad and that while in the United States he was unable to work because he was a visitor, but that when he returns to the United States he will work and be able to provide financial support. Financial documentation submitted to the record includes a W-2 for the fiancée from 2013, social security benefits statements for her parents from 2013, and bank statements for her parents

from 2014. No documentation has been submitted establishing the fiancée's expenses, assets, liabilities or her overall financial situation, and the fiancée has not asserted that she is experiencing extreme financial hardship due to separation from the applicant. Further, a letter from the fiancée's mother states that she is able to pay the applicant's expenses here and that she has submitted an affidavit of support for him.

It is acknowledged that separation often creates hardship for both parties, and the evidence indicates that the applicant's fiancée experiences hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's fiancée suffers hardship beyond the common results of separation from a loved one.

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.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a 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 appeal is dismissed.