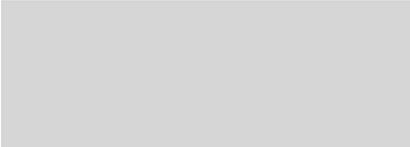




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 18 2015**

FILE #: 

APPLICATION RECEIPT #: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:



INSTRUCTIONS:

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 for a waiver of inadmissibility. 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, that his U.S. citizen spouse filed on his behalf. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and son.

In a decision dated October 27, 2014, the Director concluded that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant submits additional evidence and states that his spouse is suffering extreme financial, emotional, physical, and medical hardship without him, particularly after their son's birth. The applicant also states that his spouse would suffer extreme hardship were she to relocate to India because of the lack of medical care, educational opportunities, and job opportunities there, in addition to her family ties to the United States.

In support of the waiver application, the record includes, but is not limited to: biographical information for the applicant, his spouse, and their son; medical records; articles about the applicant's spouse's medical condition; photographs; letters from the applicant, her spouse, family members, and community members; documentation concerning the applicant's spouse's travel to India; and country-conditions information concerning India. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 [now the Secretary of the Department 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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The applicant states that he entered the United States without inspection in June 2000 and remained in the United States unlawfully through September 25, 2011, when he states that he left voluntarily. The applicant was unlawfully present in the United States for one year or more and is inadmissible for a period of 10 years from the date of his departure. He does not contest the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen. The applicant's U.S. citizen son is not a qualifying relative under the Act. In order to qualify for this waiver, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant or the applicant's son will not be separately considered, except as it is shown to affect the qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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 deportation, 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, 885 (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 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.

On appeal, the applicant states that his spouse is suffering extreme financial, emotional, physical, and medical hardship without him, particularly since their son’s birth. The record includes a birth certificate showing that the applicant’s son was born on [REDACTED] in [REDACTED] Texas. The applicant, through counsel, states that his spouse suffered “severe medical hardship” during the last trimester of her pregnancy and required surgical treatment. On appeal, the applicant resubmits a letter from a physician in [REDACTED] Texas dated September 23, 2013, stating that his spouse was being treated for pilonidal sinus with recurring infections and that she will need surgical treatment for the long-term improvement of her condition. Although that letter indicates that the applicant’s spouse was suffering from a medical condition in September 2013 and that surgical treatment was recommended, the applicant submits no documentation to support the

conclusion that his spouse received surgical treatment in the last trimester of her pregnancy and suffered severe medical hardship. Moreover, no documentation shows that the applicant's spouse still suffers from this condition, as counsel asserts. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503,506 (BIA 1980). 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)).

The applicant, through counsel, also states that his spouse "was forced to live with her brother" during the last trimester of her pregnancy and was only able to work part-time. The applicant also states that his spouse is still unable to work and that because his spouse's brother is getting married, his spouse will need to live on her own with their child. He states that the little money he sends his spouse from India is not enough to support two people. The record lacks evidence of the applicant's spouse's prior employment, her expenses in the United States while living with her brother, and her estimated expenses were she to live on her own. Again, going on the 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. at 165. Although the applicant submits some proof of his remittances to the applicant, without more this evidence does not support finding that his spouse is experiencing financial hardship as a result of their separation.

The applicant also states that his spouse is suffering from depression as a result of being separated from him, particularly during her pregnancy and her "infections and surgeries." The applicant states that this emotional hardship has reached a peak as the applicant's spouse faces raising their child alone in the United States. According to counsel's letter accompanying the applicant's appeal, "there is no question that she cannot provide for her child and herself as she cannot work and must stay at home to care for the child." We are not in a position to evaluate the emotional health of the applicant's spouse or her ability to care for herself and her child based on that statement alone. The only documentation in the record on appeal concerning the applicant's spouse's current emotional health is counsel's letter accompanying the appeal. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2. The applicant's spouse provides a sworn affidavit, dated September 10, 2014, stating that she was aware of the applicant's immigration status in the United States from the beginning of their courtship, but she did not believe that they would be separated for years. The applicant's spouse did not mention suffering from depression or describe her emotional health, although in his affidavit dated August 21, 2014, the applicant states that he and his spouse are "undergoing extensive depression apart from many other problems due to living separately." The applicant's spouse's sister, in her affidavit dated September 10, 2014, states generally that she has watched her sister struggle without the applicant "financially, emotionally, and physically." The record, however, does not contain sufficient documentation to corroborate claims concerning the stated financial, physical, or emotional hardships. The applicant bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. We recognize the impact of separation on

families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. See *Matter of O-J-O-*, 21 I&N Dec. at 383.

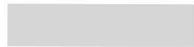
The applicant, through counsel, states that the only way to “avoid the hardship of separation” would be for his spouse to move with their child to India, but he states that they would suffer extreme hardship in India. The applicant asserts that India, and his village in particular, lacks employment opportunities, schools, hospitals, and transportation; he submits a letter from a friend, who identifies himself as the village’s “prominent person,” stating the same. The applicant’s spouse states that she could not live in India for a long period of time because there is greater freedom and job opportunity in the United States. In addition, the record includes evidence of the applicant’s spouse’s family ties in the United States.

Concerning her medical hardship in India, the applicant has not established that his spouse has an ongoing medical condition that cannot be treated in India. The applicant submits a letter from a medical officer in [REDACTED] India dated August 19, 2013, stating that his spouse received treatment there for an anal abscess. Another letter, dated July 15, 2013, from a dentist in [REDACTED] India, indicates that the applicant’s spouse was treated for bleeding gums and chronic gingivitis. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant’s spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we cannot reach a conclusion concerning the severity of a medical condition or the treatment needed. The letters in the record concerning the applicant’s spouse’s medical condition date back to 2013 and do not establish that her condition persists or that treatment is unavailable in India.

Although the applicant asserts employment prospects do not exist in India, he and his spouse also state that he sends money to the United States to help support her, and letters from medical professionals state that the applicant’s spouse has received care in India. Moreover, the applicant also provided an affidavit stating that he engages in various family-owned businesses in India. Although the applicant’s spouse has established that she is no longer a citizen of India and requires a visa to visit there, no documentation in the record establishes that she is unable to obtain a more permanent status in that country. The information provided, considered in the aggregate, does not establish that the hardship suffered in this case, should the applicant’s spouse relocate to India, would be beyond what is normally experienced by families dealing with removal or inadmissibility. See *Matter of O-J-O-*, 21 I&N Dec. at 383.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to a qualifying relative, 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 determining whether she merits a waiver as a matter of discretion.

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*NON-PRECEDENT DECISION*

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