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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: DEC 0 2 2011 Office: NEW DELHI, INDIA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated June 11, 2009.

On appeal, counsel contends the applicant's wife is suffering extreme financial hardship and is experiencing depression caused by the family's separation.

The record contains, *inter alia*: an affidavit from the applicant's wife, [redacted] an affidavit from the couple's son; a psychological evaluation; a letter from [redacted]'s employer; an approval notice for a Petition for Alien Relative (Form I-130) filed by the applicant's sister-in-law; an approved Form I-130 filed by [redacted], whom the applicant purportedly married on November 5, 1992; and an approved Form I-130 filed by [redacted], whom the applicant purportedly married on July 23, 1993. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in

> extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that he entered the United States in October 1990 using another person's passport. *Record of Sworn Statement in Affidavit Form*, dated March 24, 2009. Moreover, the record shows, and the applicant concedes, that when he was already married to his wife, [redacted] the applicant "got married to a woman named [redacted] for the purpose of getting a permanent right of entry to stay in the United States." *Record of Sworn Statement in Affidavit Form, supra.* The record further shows, and the applicant concedes, that he "married an American Citizen named [redacted] in order to gain the right to stay in the U.S." *Id.* Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife, [redacted], states that she has known her husband for over twenty-five years, that they have lived together for twenty-three years, and that they have two children together. [redacted] contends that her husband had been the sole wage earner for their family and that prior to entering the United States, she was never employed and had never earned any income. She states she is currently working at [redacted] earning $287 per week. According to [redacted], she is living in the United States with their son and her husband is living in India with their daughter because she cannot afford to support two children by herself in the United States. She states that her husband's inability to come to the United States is destroying their family. [redacted] states that she and her children are severely depressed and have difficulty concentrating. She states she has been diagnosed with a severe case of anxiety and depression. In addition, [redacted] states that if she moved to India to be with her husband, she will be either unemployed or earn only a fraction of what she earns in the United States, and their son would lose the opportunity to obtain a better education. Moreover, [redacted] contends that her family separation has created a social stigma and that she has lost respect in the Indian community because she lives apart from her husband and daughter. *Affidavit of* [redacted], dated February 12, 2009.

The applicant's son, [redacted], states that he wants to become a doctor and that his parents want him to stay in the United States to get a better education than he could get in India. He states he feels very sad and lonely most of the time because his father and sister are not in the United States. In addition, he contends that if his father were in the United States, his mother would not have to work as hard to support him. According to [redacted], his mother takes a lot of medicine because she does not feel good. *Affidavit of* [redacted], dated February 12, 2009.

A psychiatric evaluation states that [redacted] is depressed, has lost weight, is forgetful and irritable, and has difficulty sleeping. According to the psychiatrist, [redacted] currently lives with her parents and all of her siblings live in the United States. The psychiatrist contends that [redacted] family does not provide her with any emotional or financial support, demanding money from her for the apartment, shunning her because she married her husband, and telling her to go back to India. The psychiatrist contends [redacted] family did not attend her wedding and did not talk to her for six months after she married her husband because he is from a different caste. The psychiatrist states that [redacted] has thought about returning to India, but her son wants to stay in the United States to go to school. The psychiatrist diagnosed [redacted] with Major Depressive Disorder and Generalized Anxiety Disorder. *Letter from* [redacted] dated January 6, 2009.

The AAO recognizes that [redacted] has suffered hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the letter from the psychiatrist, the letter does not show that [redacted] situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding the financial hardship claim, although the record shows that [redacted] earned only [redacted] in wages from [redacted] in 2008, neither the applicant nor [redacted] address her regular, monthly expenses, such as how much rent she pays to live with her parents. Without more detailed information addressing the couple's total assets and monthly expenses, there is insufficient evidence in the record to determine the extent of her financial hardship.

Furthermore, the record does not show that [redacted] would suffer extreme hardship if she returned to India to be with her husband. The record shows that [redacted] was born in India and married the applicant in India. She does not claim that she suffers from any medical or mental health condition that would make her readjustment to living in India any more difficult than would normally be expected. To the extent [redacted] contends her son wants to continue going to school in the United States, hardship to the applicant's children can be considered only insofar as it results in hardship to [redacted] the only qualifying relative in this case. There is insufficient evidence in the record to show that any difficulty her son may experience will cause extreme hardship to [redacted] The AAO notes that the couple's daughter is already living in India with the applicant. Considering all of the evidence in the aggregate, the record does not show that [redacted] hardship would be extreme or that her situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra.*

In any event, even if the applicant had established extreme hardship to a qualifying relative, the AAO finds that the applicant does not warrant a favorable exercise of discretion. As described above, the applicant entered the United States in 1990 by using another person's passport and attempted to obtain immigration benefits by marrying two different U.S. citizens in 1992 and 1993 while he was still married to [redacted]. The applicant unlawfully resided in the United States until 2008 while working without authorization. Therefore, the applicant has repeatedly attempted to gain

lawful status to reside in the United States by perpetrating a fraud on the U.S. government over the course of many years. As such, the applicant does not warrant a favorable exercise of discretion.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.