identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

H5

FILE: [redacted] Office: BANGKOK, THAILAND (NEW DELHI, INDIA) Date: FEB 28 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality 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 District Director, Bangkok, Thailand, and 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a benefit under the Act through fraud or the willful misrepresentation of a material fact: to wit, the applicant attempted to obtain an immigrant visa by entering into a marriage with a United States citizen while the petitioner was still married to another woman, in order to circumvent the immigration laws. The record reflects that the applicant is currently married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her current U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 10, 2008.

On appeal, counsel asserts that the applicant is not inadmissible because she did not commit fraud or willful misrepresentation pursuant to section 212(a)(6)(C) of the Act. Counsel asserts that the applicant was unaware that her first husband was still married and living with his spouse when she entered into a marriage with him, and that the applicant is a victim of fraud perpetrated by her first husband. *Form I-290B*, dated October 8, 2008 and the accompanying brief in support of the appeal, dated October 8, 2008.

The record includes, but is not limited to, counsel's brief on appeal, several statements from the applicant's spouse, statements from the applicant's spouse's parents, copies of medical records and letters regarding the applicant's spouse's parents, copies of statements from [redacted] regarding the applicant's parents, copies of supportive statements from the applicant's family and friends, copies of reports of psychological evaluation of the applicant's spouse from [redacted] copies of financial and tax records pertaining to the applicant's spouse, copies of some bills addressed to the applicant's spouse and copies of country condition information on India. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present case, the record reflects that the applicant married her first husband, [redacted] a U.S. citizen, in India, on April 5, 2003. On May 10, 2003, the applicant's husband filed a Form I-130 petition on the applicant's behalf. On March 11, 2005, the Immigrant Visa Unit Chief in Mumbai, India, found that the applicant entered into a sham marriage with her first husband solely for immigration purposes and refused to issue an immigrant visa to the applicant. Subsequently, on September 15, 2005, the applicant filed for a divorce from her first husband and the divorce was approved on April 19, 2006. On June 13, 2006, the Center Director, Vermont Service Center revoked the Form I-130 filed on the applicant's behalf. On December 14, 2006, the applicant married her second husband, [redacted] a U.S. citizen, in India. On February 13, 2007, [redacted] filed an I-130 petition on behalf of the applicant, which was approved on February 2007. The applicant submitted an Application for Immigrant Visa and Alien Registration, dated July 3, 2007. The Consular Officer found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act based on the fraud relating to her first marriage and refused to issue an immigrant visa to the applicant. The applicant filed a Form I-601 waiver application. On September 10, 2008, the District Director denied the applicant's Form I-601, finding that the applicant had attempted to procure an immigration benefit by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative.

The record reflects that the Immigrant Visa Unit Chief, Consulate General of the United States of America, Mumbai India, found that due to inconsistencies in an interview related to the applicant's immigrant visa application, that the applicant committed marriage fraud with her marriage to [redacted] and refused to issue a visa to the applicant, and the Center Director revoked the Form I-130 relative petition filed on the applicant's behalf by her first husband. *See Letter from* [redacted], *Center Director,* dated June 13, 2006. Based on the applicant's prior attempt to obtain an immigrant visa, a benefit under the Act, by fraud or the willful misrepresentation of a material fact, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ([redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record reflects that the applicant's spouse, [redacted] is a [redacted] native of India and citizen of the United States. The applicant and his wife were married in India, on December 14, 2006 and they do not have any children. The applicant's spouse states that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional hardship of separation, the applicant's spouse, in his various statements, states that he needs the applicant to help him take care of his parents so that he can concentrate on his business. The applicant's spouse states that his parents have medical problems that have made it difficult if not impossible for them to take care of themselves. As a result, he has become their primary caregiver because they are unable to do anything for themselves. The applicant's spouse states that the stress of taking care of his parents needs and managing three businesses has taken a toll on him and as a result, he is unable to sleep, eat, or concentrate on his business. The applicant states that if the applicant is in the United States, with him, she will be responsible for taking care of his parents thereby reducing the stress he is undergoing so that he can concentrate on his business. The applicant's spouse also states that he suffered a lot in his first marriage, which ended in divorce, but that the applicant has "helped me a lot with my emotional stress and gave me that support and comfort that I so much needed." The applicant's spouse states that "the thought of being separated from [the applicant] is psychologically and emotionally traumatizing to me." The applicant's spouse further states that he recently found out that the applicant is pregnant with their first child, and that the separation from the applicant and their unborn child has increased his stress level. Regarding the financial hardship of separation, the applicant's spouse states that he borrowed a significant amount of money to purchase three businesses and a home, and is making payments on the loan. He asserts that since the separation from the applicant, he has suffered serious financial loss because he is unable to attend to business regularly due to the fact that he has to look after his parents because the applicant is not in the United States to help him take care of them, which has resulted in business losses and a financial hardship to him.

The record contains an undated copy of a psychological assessment and a copy of a psychotherapy evaluation, dated August 28, 2008, from [redacted] and Trauma Specialist, regarding the applicant's spouse. [redacted] diagnosis the applicant's spouse with Major Depressive Disorder stemming from the separation from the applicant and being faced with a difficult choice of abandoning his family and business in the United States and relocating to India to be with the applicant. [redacted] recommends that the applicant's spouse obtain psychological support and psychotherapy treatment. *See Progress Note from* [redacted] dated August 28, 2008. The record does not contain evidence that the applicant's spouse is receiving the psychotherapy treatment that was

recommended by [redacted] The record also contains brief statements from [redacted] and copies of medical records for the applicant's spouse's parents. The brief statement from [redacted] states that the applicant's spouse's parents are his patients, that the applicant's father has the following medical conditions; Diabetes Type 2, Hypertension, Hypercholesterolemia, Diplopia, Anemia and s/p right Acetabular Fracture. He states that the applicant's spouse's mother has the following medical conditions: Right leg pain, Varicella, Cellulites, Arm pain, Elbow pain, Upper respiratory infection and Lipoma. The statements do not demonstrate how denial of the applicant's waiver request will impact her spouse's parents and in turn result in extreme hardship to her spouse. The record also contains financial information regarding the applicant's business obligations as well as the mortgage for his residence; however, the record does not contain detailed information on any business losses sustained due to separation from the applicant, or detailed information on the family income and expenses. Without such documentation, the AAO cannot conclude that separation from the applicant has resulted in extreme financial hardship to the applicant's spouse.

Additionally, the AAO notes that while the input of any mental health professional is respected and valuable, the submitted assessment by [redacted] is based on one telephone interview with the applicant's spouse. In that the conclusions reached in the submitted assessments are based solely on a single interview of the applicant's spouse, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. Consequently, the AAO finds that the applicant has failed to establish that the challenges his spouse faces as a result of family separation, rise to the level of extreme hardship.

Regarding relocation, the applicant's spouse submitted several statements providing the following reasons why he does not want to relocate to India to live with the applicant: he has been residing in the United States for a long period of time, he is responsible for the care of his parents, he owns businesses, he has financial obligations to the banks who lent him money to purchase the businesses and he does not want to abandon his businesses and his financial obligations to the banks; he is concerned that he will not be able to obtain adequate employment that will pay him sufficient money to take care of himself and his family in India as well as fulfill his financial obligations in the United States; and he is concerned for his safety and the safety of his family in India because of lack of security in the country and terrorist organizations operating in India that are intent on harming American citizens. The record contains various country condition reports on India.

The AAO acknowledges that the applicant has business interests in the United States as well as family members in the United States who will be impacted by his relocation to India, however, the evidence in the record is not sufficient to establish that the applicant's spouse will suffer extreme hardship upon relocation to India. The country reports provide a general overview of the situation in India, but do not establish that the applicant or her spouse will be targets of crime or violence there. The record does not establish that the applicant's spouse would be unable to obtain employment in India that will pay him enough money to take care of himself. The record does not contain evidence that the applicant's parents-in-law depend on the applicant's spouse for their daily care and that relocation of the applicant to India will result in extreme hardship to her in-laws and in turn will cause extreme hardship to the applicant's

spouse. Thus, the AAO finds that the applicant has failed to establish that her spouse will suffer extreme hardship upon relocation to India to live with her.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch,* 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.