

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

PUBLIC COPY



715

FILE:



Office: NEW DELHI, INDIA

Date:

MAR 1 1 2011

IN RE:

Applicant:



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:



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, 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 seek admission into the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and the mother of an Indian citizen child. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and son.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 11, 2008.

On appeal, the applicant, through counsel, claims that the applicant's spouse will suffer extreme hardship if the applicant's waiver is not granted. *Form I-290B*, dated January 6, 2009. Additionally, counsel states the applicant was found inadmissible to the United States under section 212(a)(9) of the Act, which prohibited her from entering the United States for 5 years from the date of her departure. *Id.* Counsel states the applicant is "procuring entry into the United States after the expiration of her 5 year bar." *Id.* The AAO acknowledges that the applicant is seeking admission into the United States after the expiration of the 5 year bar; however, she is still inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

The record includes, but is not limited to, counsel's statement, statements from the applicant and her husband, and documents from the applicant's apprehension and removal from the United States. 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 indicates that on April 14, 2001, the applicant presented a photo-substituted passport in an attempt to enter the United States.

In a statement dated May 6, 2008, the applicant's husband states the applicant "did not have any intention of misrepresenting.... [The applicant] never wanted to deceive and neither did she have the knowledge of falsity till [sic] actually reaching the ticket counter." In the applicant's sworn statement, the applicant states that when she arrived [REDACTED] a man "took [her] directly to the airport and made [her] stand in line with him and also gave [her] [a] passport of [REDACTED] and told [her] that if anybody asks [she] should say [her] name is [REDACTED] and that [she] should say that [she] [is] his wife." The AAO notes that the applicant claimed that she was "very scared;" however, she continued to travel on the passport in another individual's name. *See record of sworn statement in affidavit form.* Additionally, she admitted to presenting that passport to the inspector when she entered the United States. *See record of sworn statement in proceedings under section 235(b)(1) of the Act*, dated April 15, 2001. Further, the applicant admitted to making arrangements to pay the man 300,000 Rupees when she arrived in the United States. *Id.*

The AAO finds the applicant's husband's contention that the applicant did not intend to misrepresent a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. Based on the applicant's own statement, she clearly understood that she was traveling to the United States on a passport in another individual's name before she left Madras. The AAO finds the record to support a determination that the applicant attempted to obtain admission into the United States through misrepresentation. Accordingly, the AAO finds that 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 or her child 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 United States Citizenship and Immigration

Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 (Board) 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) ("Mr. Arrieta 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 first prong of the analysis addresses hardship to the applicant’s spouse if he relocates to India. The applicant’s husband states he is “now firmly entrenched in the society and [has] started building a business.” He claims that he is “presently running [his] own business and [has] been looking after financial aspects of [his] family.” He states he has outstanding loans and credit cards, and has “recently given a down payment for another business.” He also states that he “would suffer a huge amount of monetary loss, if [he] were forced to sell [his] business during the current economic down turn trend, and would not be able to payoff [his] loans.” He claims that “it would not be possible for [him] to go back to India, and financially support [the applicant] and [his] child.” Additionally, he states his son “would lose the opportunity for better education and better life along with a better standard of living.” The AAO notes the applicant’s husband’s concerns regarding relocating to India.

The AAO acknowledges the claims made regarding the difficulties the applicant’s husband would face in relocating to India. The AAO notes that the applicant’s husband has been residing in the United States for many years. However, the AAO observes that the applicant’s husband is a native of India and the record does not establish that he does not speak useful languages or that he has no family ties to India. The AAO notes that other than the applicant’s husband’s statement, no documentary evidence has been submitted establishing his business ownership or activities. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *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)). Therefore, the AAO finds that the applicant has not established that her husband would face a loss of income or investment should he return to India. Additionally, the AAO notes that no country conditions materials or documentation has been submitted to establish that the applicant’s husband would be unable to

obtain employment in India. The AAO acknowledges that the applicant's son may not have access to an American education or standard of living in India; however, the AAO finds that the applicant has not shown that hardship to her son will elevate her husband's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to India.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. The applicant's husband states it "would cause extreme mental and financial hardship to [him] if [the applicant] were not given an immigrant visa to the United States." He states "[t]he thought of being forced to live without [the applicant] and [his] child causes [him] intense anxiety." The AAO notes that the record establishes that the applicant and her husband have lived apart since 1999. The applicant's husband states he is having anxiety and depression. He claims that he has not spent any time with his son; however, it "would also not be possible for [him] to keep [his son] here alone without [the applicant]."

The AAO notes that the applicant's husband may be suffering some hardship in being separated from the applicant and his son; however, the record does not establish that his emotional hardships go beyond the typical effects of separation. Additionally, other than the applicant's husband's statement, the record does not establish that the applicant's husband cannot have his son reside with him in the United States. The AAO notes that the applicant's husband may be experiencing some financial hardship in being separated from the applicant; however, the applicant has not provided any documentation to establish her husband's financial obligations or economic situation. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she cannot obtain employment in India and, thereby, reduce the financial burden on her husband. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband will suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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.