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
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: APR 2 0 2012 OFFICE: NEW DELHI FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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,

Ellen C. Johnson

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 applicant, [redacted] is a native and citizen of India. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact to procure a visa to the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility (Form I-601) pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen husband.

On January 29, 2010, the Field Office Director concluded that the applicant failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her United States citizen husband, and denied the application accordingly.

On appeal, counsel for the applicant states that the applicant's qualifying relative will suffer extreme hardship.

In support of the application, the record contains, but is not limited to, briefs from counsel for the applicant, letters from the applicant's family members in the United States, a letter from the applicant's mother-in-law, biographical information for the applicant's family members in the United States, an evaluation of the applicant's spouse by a licensed clinical social worker, documentation concerning the murder of the applicant's spouse's brother, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

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

> (i) 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.

The applicant was determined to be inadmissible under INA § 212(a)(6)(C)(i) due to her failure to disclose that her husband resided in the United States when she applied for a B-2 nonimmigrant visa on July 19, 2000. INA § 212(a)(6)(C)(i) is a permanent ground of inadmissibility and the applicant does not contest her inadmissibility on appeal.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [*Secretary*], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [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.

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 in this case is the applicant's U.S. citizen husband. Hardships to the applicant or her children are not directly relevant under the statute and will be considered only insofar as hardship to them results in hardship to the applicant's spouse. 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).

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.*

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). 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.

In this case, the qualifying relative is the applicant's U.S. citizen spouse. The applicant's spouse states that he is suffering emotional, physical, and financial hardship as a result of being separated from the applicant. In regards to financial hardship, the applicant's spouse states that maintaining two households, one in California and the other in India, has been a financial strain on him. A report by [redacted] states that the applicant's spouse owns a Subway sandwich shop in California, where he earns approximately $2,500 per month. [redacted] goes on to state that the applicant's spouse's expenses total $1,800. It is not clear from the record if the applicant's spouse has credit card debt and a home payment in addition to the $1,800 or if those expenses were included in the $1,800. There is no documentary evidence of the applicant's spouse's income, restaurant ownership, or expenses in the record aside from the mention of the amounts listed above in [redacted] report. There is also no documentary evidence in the record to indicate how much financial support that the applicant's spouse provides to the applicant in India. The applicant's divorce decree from the termination of her first marriage with her current spouse indicates that she was not receiving financial support from her husband while he was in the United States. Although that decree is from July 20, 2002, there is not more recent documentation in the file to indicate that the situation has changed. As a result of this lack of documentation, it is not possible to conclude the degree of financial hardship that the applicant's spouse experiences as a result of the applicant's inadmissibility.

The applicant's spouse also states that he is experiencing emotional hardship as a result of the separation from his wife, the death of his brother in India, and his difficulties caring for his two adult children in the United States. Although counsel for the applicant states that the applicant's

spouse is suffering from debilitating depression, there is no documentation in the record to indicate the effect that the applicant's spouse's depression is having on his ability to function. The type of hardship described by the applicant's spouse in regards to caring for his two children, who are now 22 and 20 years old, includes difficulty helping the children with their homework, cooking for them, and caring for their health. [redacted], in his report, states that the applicant's spouse is "depressed most of the day nearly every day; that he has lost interest in things that he used to enjoy; that he feels sad and empty most of the day" and that he has lost 13-14 pounds. The report also indicates that the applicant's spouse has an alcohol problem. No additional information is provided concerning what activities the applicant's spouse no longer enjoys and no context is provided for the applicant's spouse's weight loss. The record does not contain any indication that the applicant's spouse has been evaluated by a medical professional for his alcohol problem, depression, or weight loss. [redacted] also states that the applicant's spouse indicated to him that he has guilt, concentration, and worry issues that presented when he was married to his second wife, improved after second marriage to his first wife, and have again worsened with the death of his brother and that he "is at very serious clinical risk for depressed mood; anxiety/worry; diminished interest; and cognitive and physical fatigue." [redacted] concludes that the applicant's spouse is in need of his wife "who can hopefully function to mitigate his symptoms." The report, however, does not recommend any course of treatment for the applicant's spouse. Although the AAO respects the professional opinion of [redacted] his report emphasizes potential prospective harm to the applicant's spouse's emotional health rather than provide any concrete information regarding the degree to which the absence of the applicant has significantly affected the applicant's spouse's present emotional health. Moreover, the documentation in the record indicates that the applicant and his wife had a tumultuous first marriage and have spent very little time together in the past ten years. In addition, as noted in the field office director's decision, there are significant differences between [redacted] report and prior statements by the applicant and her husband regarding their initial marriage, separation, divorce and eventual remarriage. As such, it is difficult to discern the validity of the findings in [redacted] report. Although the AAO recognizes the significance of family separation as a hardship factor, and recognizes that the applicant's spouse is suffering emotional hardship due to the applicant's inadmissibility, the applicant has not met her burden of proof to document that the hardship her spouse faces is extreme in nature.

The applicant's spouse also states that he would suffer extreme hardship should he relocate to India to reside with his spouse. The applicant states that as a result of his father's political affiliation and his brother's arrest on murder charges, he began to fear for his physical safety in India shortly after he first arrived in the United States. There is no documentation in the record, however, to indicate that the applicant's spouse applied for political asylum in the United States nor is there any documentation in the record to indicate that the applicant is now or has ever been at risk in India as a result of his father's political affiliation or for any other reason. The newspaper articles submitted regarding the applicant's spouse's brother's very unfortunate murder in India give no indication that the murder was a result of the applicant's father's political involvement in India in the 1970s, but rather the articles indicate that there is speculation that the murder was a result of the applicant's brother's business dealings. The record also indicates that the applicant's spouse chose to leave India in 1998, leaving behind his wife and two young children for personal

reasons. In fact, the divorce decree terminating his first marriage to the applicant alleges that the applicant's spouse beat and harassed the applicant before his departure from India. Although, the applicant's spouse now wishes to be reunited with his wife in the United States after having, in the meantime, married and divorced a U.S. citizen and obtained lawful status in the United States, there is no indication that the applicant's spouse would suffer extreme hardship if he were to return to India. The applicant has not provided any documentation of her husband's business ownership in the United States or any financial hardship that he would suffer if he were to leave his business and return to India. [redacted] report regarding the applicant's spouse's emotional health does not mention whether the applicant's spouse would suffer any emotional hardship if he were to return to India, despite counsel's statements that the applicant fears for his safety in India. Although the AAO takes note of the unfortunate circumstances around the death of the applicant's spouse's brother in India, it is not possible to make the determination that the applicant's spouse would suffer extreme hardship if he were to return there. The applicant's spouse's children are now adults and there is no indication that the applicant's spouse would suffer emotional hardship if he were separated from his children.

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 AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under section 212(i) 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.

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. 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.