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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: JUL 20 2012 OFFICE: CHICAGO, ILLINOIS FILE: [redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Chicago, Illinois, 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 a 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 having sought to procure admission by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and son in the United States.

The Field Office Director concluded that the applicant 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. *See Decision of the Field Office Director,* dated March 12, 2010.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred by applying the higher standard of relief for individuals in removal proceedings as discussed in *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), and in so doing, failed to properly consider the totality of the circumstances and the cumulative effect of the hardship to the applicant's family because of the applicant's inadmissibility. Counsel also asserts that the applicant's circumstances are distinguishable from those in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), and that the USCIS erroneously relied on *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), and *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) in its determination of the applicant's waiver application. *See* Notice of Appeal or Motion (Form I-290B), dated April 6, 2010.

The record includes, but is not limited to: briefs and correspondence from previous and current counsel; letters of support; identity, medical, employment, and financial documents; photographs; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (C) Misrepresentation.-
>
> > (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).

The Field Office Director found the applicant inadmissible for attempting to procure admission to the United States on November 6, 1996, by presenting a Resident Alien Card (Form I-551) and Indian passport that did not belong to her, and for failing to disclose her true intention in coming to the United States as an intending immigrant. The record supports the finding, and the AAO concurs that the misrepresentations were material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides in pertinent part:

> (1) The Attorney General [now 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 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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant and the applicant's son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 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. at 813.

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.

Counsel contends that the applicant's spouse will suffer extreme medical, emotional, and financial hardship in the applicant's absence as the spouse relies on the applicant for love and assisting with: managing his physical pain; regulating the family's diet; ensuring that his and his parents' medical needs are met; rearing their son and niece; and managing their small business. Counsel also contends that the stress of the applicant's immigration status has taken a significant toll on the spouse and that he faces extreme anguish and pain as he must decide between being separated from the applicant and raising their son alone, or living a life of isolation in India without his other immediate family members and business. Counsel further contends that the spouse is the primary breadwinner, but relies on the applicant to assist him with running the family-owned liquor store to raise enough money to cover their bills, and that the applicant likely would be unable to earn

money in India to contribute to the maintenance of their households and which would diminish the lifestyle to which the spouse and their son have become accustomed. Additionally, counsel contends that the applicant's and the spouse's son would suffer extreme hardship as he would be subjected to all the disadvantages that a single-parent household entails, including deprivation of the emotional and financial support of one-half of the parental unit.

The spouse indicates that at his age, he cannot handle his life, work, and the possibility of physical pain returning without the applicant's assistance and that he would die as he cannot live without the applicant in his life. He also indicates that they have the same dreams: live together in the United States as a married couple, raise their son, and own a business. And, he wants the applicant to have the freedom that women have in the United States as their Hindu culture does not permit women to go outside on their own or to work. He also states that his elderly parents live in his household, do not work, and have heart, knee, and other health concerns that require medications and regular doctor visits.

The applicant's and the spouse's son indicates that he needs the applicant's presence to encourage him with his studies and sports activities as the applicant has been a good adviser throughout his life. He also indicates that he would like to study engineering and would need his family to stay with during his studies.

The evidence on the record is sufficient to establish that the applicant's spouse was treated for ureteral (kidney) stones by the Advocate Good Shepherd Hospital Emergency Department, and because of this condition, he may experience some medical and emotional hardship in the applicant's absence. However, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record does not include any discussion concerning the necessity of the applicant's participation in the spouse's treatment for his medical condition. Moreover, the documentation indicates that the spouse's associated pain "reduces with medications." *Medical Report Issued by the Comprehensive Urologic Care, S.C.*, dated June 16, 2010. Additionally, the record does not include any specific evidence of the spouse's current mental health or the spouse's parents' physical health; only general statements from counsel and the spouse. As the record lacks an explanation in plain language of the exact nature and severity of the applicant's spouse's mental health and a description of any treatment or family assistance needed concerning his mental health and his physical condition as well as his parents' physical conditions, the AAO is unable to reach conclusions concerning the severity of physical or mental health conditions or the treatment needed.

Additionally, the AAO notes that the applicant's spouse is the primary breadwinner as the proprietor of Top Shelf Liquor, incorporated as Narnarayan Enterprises, Inc., in Fox River Grove, Illinois, on September 20, 2007. And, the record includes a self-reported list of income and expenditures for the applicant's and the spouse's household in 2009 as well as specific evidence of some bills: rental lease agreement; mobile and landline phones; and utilities. However, there is not sufficient evidence in the record that the spouse would be unable to support himself in the applicant's absence, or of the applicant's inability to contribute to her and the spouse's

households. The evidence in the record does not support the spouse's statement that Hindu women are unable to work. While there are discriminatory practices of women in the workplace in India, there do not appear to be prohibitions according to the country conditions information submitted by counsel: "The law prohibits discrimination in the workplace; in practice employers paid women less than men for the same job, discriminated against women in employment and credit applications, and promoted women less frequently than men." U.S. Department of State, *Country Reports on Human Rights Practices, India (2009)*. Accordingly, the AAO cannot conclude that the record establishes that the spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's emotional, medical, and financial hardship that he may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Further, counsel contends that the applicant's spouse will suffer extreme hardship if he were to relocate to India to be with the applicant as: he must be near his doctors for medical treatment: his closest family ties are in the United States; he is accustomed to the American way of life; he would have to abandon his business as well as his professional and social ties; he likely would be unable to receive a comparable salary or run a business; he does not maintain any real or significant property in India; he would be unable to afford healthcare; and he worries about his son's health and safety. Counsel also contends that the applicant's and the spouse's son will lose the opportunity of a good education as they would be unable to afford a quality, university education in India, which would be excruciating for the spouse as he would like to provide his son with a higher education. And, counsel contends that the son also will lose all of the other benefits and freedoms of life in the United States.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to India with the applicant. The spouse maintains a close relationship with his Lawful Permanent Resident parents and U.S. citizen son, all of whom live with him, and he has steady employment as a small business owner. And, although the U.S. Department of State's current travel advisory indicates that medical care in the major population centers "approaches and occasionally meets Western standards", in the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if he were to relocate to India because of his length of residence and strong family, business, and social ties to the United States, considered along with the normal hardships associated with relocation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of

inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 U.S. citizen spouse 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 the applicant 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.