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

(b)(6)

DATE: MAR 14 2013 OFFICE: SACRAMENTO FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), (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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for having sought to procure admission to the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, in order to remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant was inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen spouse. *Decision of Field Office Director,* dated October 26, 2011.

On appeal, counsel submits a brief, a supplemental letter and copies of previously submitted evidence. The record also includes, but is not limited to: hardship letters from the applicant's children, military records for the applicant's son, academic records for the applicant's children and grandchild, medical records for the applicant, a family impact study, tax and financial records, business documents, banking records, travel records, articles on country conditions in India, and family photographs.

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 Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> ...
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> ...

> (v) Waiver.-The [Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The Field Office Director determined that the applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> 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)(1) of the Act provides, in pertinent part:

> The [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, U.S. Citizenship and Immigration Services (USCIS) records show that the applicant claimed to have first entered the United States without inspection on October 2, 1992. She filed an application for asylum later that year, which was referred to the Immigration Court and the applicant was ordered removed *in absentia* on October 7, 2003. Previously, on January 8, 2003, the applicant had filed an application for adjustment of status under the provisions of the Legal Immigration Family Equity (LIFE) Act. After filing for adjustment of status, the applicant applied and was approved for advanced parole and was issued a Form I-512L-Authorization for Parole into the United States on June 6, 2003. Thereafter, the applicant left the United States and returned on November 6, 2004 when she was paroled in to the United States to resume her LIFE Act application for adjustment of status. That application was denied on September 12, 2008. The applicant is the beneficiary of a Form I-130, Petition for Alien Relative, filed by her U.S. citizen husband, which was approved on October 26, 2011.

In denying the applicant's corresponding Form I-601, Application for Waiver of Ground of Inadmissibility, the Field Office Director determined that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having traveled outside of the United States on advance parole after having been unlawfully present for more than one year. However, in *Matter of Arrabally*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an

alien who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally,* the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's waiver application pursuant to section 212(a)(9)(B)(v) is thus unnecessary.

However, USCIS records further show that the applicant willfully misrepresented material facts on her asylum application including her name and date of birth. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission through willful misrepresentation. This ground of inadmissibility is not contested on appeal.

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. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen husband. 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 of Immigration Appeals 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's qualifying relative.

The record does not establish that the applicant's spouse would experience extreme hardship in the event of separation from the applicant. Regarding emotional and medical hardship, counsel asserts that the applicant's husband has a ruptured disk in his back and suffers from chronic back pain and memory loss, for which he relies on the applicant for physical and emotional support to operate their business, manage their household and raise their youngest child. The record does not include evidence showing the applicant's husband's medical conditions for which he may require the applicant's physical assistance and emotional support. Counsel further asserts that the applicant is clinically depressed as a result of the denial of the applicant's waiver. In support of

this claim of emotional hardship, the applicant submits a family impact assessment performed by Licensed Clinical Social Worker (LCSW), which diagnosed the applicant's husband with Major Depressive Disorder Single Episode. *Family Impact Assessment,* dated June 25, 2008. On appeal, the applicant does not submit evidence showing the status of the applicant's husband's emotional well-being or mental health after the initial depression screening on June 25, 2008. The evidence of record is insufficient to establish that the applicant's husband would suffer extreme emotional hardship upon separation.

Counsel asserts that the applicant's children will suffer emotional hardship upon separation from the applicant and as a result, the applicant's husband will experience emotional hardship from seeing his children suffer. The record includes support letters from the applicant's children describing the ways in which the applicant supports them. However, the record does not include any other evidence of the applicant's children's emotional well-being or mental health to show the children's emotional hardship, if any, and how their difficulties would cause the applicant's husband, the qualifying relative, to suffer emotional hardship upon separation from the applicant.

Regarding financial hardship, counsel asserts that the applicant's husband is unable to manage their business without the applicant's physical labor and support given the applicant's husband is suffering from chronic back pain and short term memory loss. Counsel further states that the applicant's husband cannot earn a profit if he hires an employee to perform the applicant's duties upon separation given the current economic conditions. Counsel also claims the applicant's husband will suffer financial hardship from having to maintain two households from the proceeds of their business without the applicant's assistance. The record contains business records showing that the applicant and her husband co-own a profitable motel in California. While the record contains tax records documenting the income of the applicant and her husband, the record does not contain evidence of the family's total expenses in California and upon separation showing financial hardship. The record does not show that the applicant's husband is unable to operate the business on his own or with the support of immediate family members or employees and does not contain supporting documentation of the applicant's husband's medical conditions and the resultant physical limitations impacting his ability to work. The record also does not address the applicant's ability to secure employment in India or rely on the financial support of her parents who reside in India.

The record does not contain sufficient evidence to establish that the emotional and financial difficulties facing the applicant's husband rise to the level of extreme hardship in the event of separation from the applicant.

The record also does not establish that the applicant's spouse would experience extreme hardship if he were to relocate to his native India with the applicant. Regarding emotional and medical hardship, counsel claims that the safety and medical conditions in India will result in hardship to the family since they will not have access to a decent standard of living, security or comparable medical care in India. The record does indicate that the applicant suffers from uterine bleeding and that she has access to health insurance in the United States but does not show that the applicant would not be able to access comparable medical care for her condition in India or that

the applicant's husband would suffer extreme emotional or financial hardship from the applicant's inability to access comparable medical care. While the record contains some evidence of general country conditions in India which show deficiencies in women's rights, safety and health care, the applicant's husband does not address where in India the family will reside upon relocation, the specific social, safety, or health care deficiencies the applicant's husband or his family members would experience, and how these hardships on his family or him will affect him, the qualifying relative. Similarly, while the record indicates that the applicant's husband has other family ties in the United States, the applicant's husband does not indicate that he would suffer emotional hardship upon separation from his other family members in the United States.

Regarding financial hardship, counsel states that the applicant's husband will be unable to financially support his family given the economic conditions in India. In support of these claims, the record contains general articles on country conditions in India showing a high rate of unemployment and a lower minimum wage, which generally does not provide a decent standard of living for a worker and his family. However, the record does not specifically address the applicant's husband's general employment prospects in India or his inability to financially support his family in a specific locale in India or from proceeds from his motel business in California after relocation.

While emotional and financial difficulties are common results of inadmissibility, the evidence in this case does not establish that the applicant's husband would suffer extreme emotional or financial hardship in the event of relocation to his native India.

The applicant has failed to establish extreme hardship to her qualifying relative as required for a waiver of his inadmissibility 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 a 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.