U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

DATE: JUN 2 1 2012

Office: NEW YORK, NY

[redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§1182(i) and 1182(h)

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

The record reflects that on October 27, 1992, the applicant arrived without travel documents at JFK International Airport and misrepresented that he was another individual, [redacted], a citizen of India. He then requested political asylum. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for seeking to procure admission into the United States by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

> 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 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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.

The applicant's U.S. citizen spouse is his qualifying relative under section 212(i) of the Act. The record contains references to hardships the applicant's children would experience if the waiver application were denied. It is noted, however, that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Accordingly, hardship to the children will be considered only to the extent that it causes the applicant's spouse to experience hardship.

The applicant's wife, a native of India, states in affidavits that she and the applicant have been married since 1996, she has been a U.S. citizen since 2002, and they have three U.S. citizen children. She depends on the applicant "emotionally, financially, socially and spiritually," and she suffers from migraine headaches, is in the beginning stages of diabetes, and, with the applicant's help is recovering from a near fatal pregnancy and surgery. The applicant's wife states that her husband lacks work experience in India. She states further that she could not live in India with the applicant due to the threat of war between Pakistan and India, high rates of crime against women, civil and criminal violence, insufficient medical care, and the poor economy.

The applicant, in a sworn statement accompanying his waiver application, states that he and his wife want to buy a house and give their children the best future possible in the United States, and that his wife and children would suffer emotionally and financially if he were denied admission into the country.

The record contains utility bills, bank statements, and federal income tax forms. An undated letter from a doctor states the applicant's wife suffers "off and on" from severe migraine attacks, "is under investigation for her problem," and needs to stay in the United States "for proper management of her disorder." Medical records also confirm that the applicant's wife had gestational diabetes during her pregnancies.

Department of State country-conditions reports reflect instability in the Jammu, Kashmir, and Pakistani border areas of India, the existence of anti-Western terrorist groups, and continuing terrorist and insurgent activities in India. The reports also reflect that petty crime is common in India, women are cautioned not to travel alone and to observe stringent safety precautions, the quality of medical care varies considerably, and adequate medical is available in major population centers, but can be limited or unavailable in rural areas.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. Although medical evidence reflects the applicant's wife occasionally suffers from migraines and had gestational diabetes during her pregnancies, the evidence fails to corroborate assertions that she currently suffers from a serious medical condition, or that her health would be negatively affected if the applicant were not present. The record also lacks evidence establishing the applicant's wife would experience emotional hardship beyond that normally experienced upon removal or inadmissibility if she and her children remained in the United States. In addition, the tax forms and utility bills submitted on appeal fail to establish the applicant's wife depends on the applicant financially or that she would experience financial hardship if she remained in the United States.

The cumulative evidence also fails to establish that the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if she relocated to India to be with the applicant. The record lacks evidence to corroborate assertions that the applicant would be unable to find work in India, or that his wife would experience financial hardship in India. The record also lacks evidence establishing that the applicant's wife suffers from a serious medical condition, or that she and her family would be unable to obtain adequate medical care in India. The country-conditions evidence, in and of itself, fails to establish that the applicant's wife would experience extreme emotional or physical hardship in India based on safety concerns. In addition, the record reflects that the applicant's wife was born and raised in the Punjab and is familiar with the culture of the country.

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 an 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.