



U.S. Citizenship
and Immigration
Services



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DATE: **OCT 24 2012**

Office: NEW DELHI, INDIA

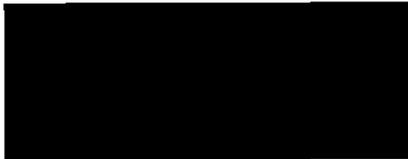
FILE: 

IN RE:

Applicant: 

APPLICATION: Applications for Waiver of Grounds of Inadmissibility pursuant to sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 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 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 with the field office or service center that originally decided your case by filing a 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 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 applications were denied by the Field Office Director, New Delhi, India, and are 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)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for presenting fraudulent documents to obtain a nonimmigrant U.S. visa. The applicant is the adult son of a U.S. citizen. He seeks waivers of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to the qualifying relative, as required for waivers under sections 212(h) and (i) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated July 19, 2010. The director noted that the applicant had failed to provide evidence of extreme hardship as required, even after a Request for Further Evidence had been issued on May 4, 2010.

On appeal, counsel contends that the director's decision was arbitrary, capricious and constituted an abuse of administrative discretion because discretion was not exercised correctly. *Form I-290B, Notice of Appeal or Motion*. He further asserted that while extreme hardship facts were set forth in the director's decision, they were not sufficiently considered. *See id.*

The record of evidence includes, but is not limited to, the applicant's statement on the Form I-601; the applicant's father's letter; the psychological evaluation of the applicant's father; the applicant's conviction records, and the applicant's Indian passports. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

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 record reflects that the applicant resides permanently in India. On or about June 6, 1999, the applicant sought to obtain a nonimmigrant visa using fraudulent documents under another identity, Vinod Mehra. The applicant was unsuccessful and he was criminally prosecuted by the local Indian authorities. On or about August 9, 2004, the applicant pled guilty to charges under sections 419, 420, 468, 471, and 511 of the Indian Penal Code (IPC) and under section 12 of the Indian Passport Act and was sentenced to seven days imprisonment in addition to one month time served. He was also fined 5000 Rupees (Rs.). The maximum term of imprisonment is three years for a conviction for Cheating under section 419 of the IPC and seven years for a conviction for Cheating and Dishonestly Inducing Delivery of Property under section 420 of the IPC.¹

As the applicant has not disputed inadmissibility, and the record does not show the finding to be in error, the AAO will not disturb the determinations of inadmissibility under sections 212(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, and 212(a)(6)(C)(i) of the Act, for having made a material misrepresentation to gain an immigration benefit. The applicant seeks waivers under section 212(h) and (i) respectively to overcome these grounds of inadmissibility. The qualifying relative for purposes of both waivers is the applicant's U.S. citizen father.

Section 212(h) 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. *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 (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

¹ As the record shows that the applicant's convictions under these two sections of the IPC are both crimes involving moral turpitude, which counsel has not contested on appeal, they are sufficient to establish that the applicant does not fall within the petty offense exception to a finding of inadmissibility under section 212(a)(2)(A)(i)(I). We, therefore, need not consider his convictions under the remaining statutory sections indicated in the criminal disposition.

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. INS*, 138 F.3d 1292, 1293 (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.

On appeal, counsel asserts the applicant and his family have set forth sufficient factors to establish that the applicant's U.S. citizen father would suffer extreme hardship if the applicant is refused admission to the United States. However, the original record contained only a letter from the

applicant's father that indicates that he wants the applicant to come and live with him in the United States permanently because he needs his son's services during old age. Counsel submits on appeal, a psychological evaluation of the applicant's father, prepared by a licensed psychologist, Dr. [REDACTED] Ph.D., following a single interview on August 10, 2010 and indicating that the applicant's father has been diagnosed with Major Depressive Disorder. Dr. [REDACTED] concludes that the separation of the applicant and his father has resulted in extreme and exceptionally unusual hardship to the latter and that only their reunion in the United States will alleviate the depression.

As the letter of the applicant's father does not set forth in any detail the hardship he would face, we will summarize the relevant facts as he reported at his psychological interview. The evaluation indicates that the applicant's father reported that he has been extremely depressed and anxious since learning that the applicant, his eldest son, may not receive permanent residency in the United States. He stated that due to the excessive stress, his immune system and overall health has deteriorated. He also reported chronic headaches and head and back pain, which were not relieved by the medication he has been taking. He states that he can no longer afford to go to the chiropractor anymore. The applicant's father also reported at his interview that he is getting older and that the applicant is the only one upon whom he can rely to take care of him. He indicated that the applicant has been a good friend and a source of advice and guidance during difficult times, including the end of both his marriages. The applicant's father stated that his daughter in the United States is married and has two kids, and that it is not culturally acceptable for her to help her father. He contends that he and his younger son, Manbreet, have been having increasing conflicts at home and that he needs the applicant's help in opening up communication between them. The report indicates that the applicant's father blames himself for not being able to bring the applicant to the United States, as he did with his younger children. He reported that he cries on the phone when speaking to the applicant because he feels he is the reason that the applicant is alone in India.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen father would experience extreme hardship upon separation from the applicant. We note that the record is nearly devoid of any evidence of hardship. Although the psychological evaluation sets forth what the applicant's father reported at his interview, we note that no corroborating evidence has been proffered in support of his assertions, including in his own statement. While he reported that he lives with chronic pain and that his health has deteriorated, the record does not contain letters from his medical care providers or other documents evidencing his health issues. Likewise, the applicant's father failed to reference in his letter, the physical and mental health issues from which he was suffering, despite the fact that the Request for Further Evidence issued by the director, specifically requested that he articulate the hardship he would face if the applicant's waiver was denied. Similarly, at the applicant's consular interview, in response to questioning regarding hardship to his father, the applicant indicated only that his father is getting older and is concerned that the applicant is living alone. While we understand that the applicant's father may feel guilt and distress at not having been able to bring his third child to the United States, the record shows that the applicant is approximately 35 years old, is employed as a tailor, and has very close ties in India, including his mother. Moreover, the psychological evaluation indicates that the applicant's father is the second of seven children born in India, suggesting that the applicant may have a strong support system from his extended family.

We also observe that the applicant and his father have been physically separated and voluntarily lived apart nearly twenty years before the denial of the waiver application. *See, e.g., Matter of Ngai,*

19 I&N Dec. at 246 (noting voluntary separation for lengthy period as a factor in support of Board's finding that extreme hardship to the qualifying relative was not established). There is no indication in the record that the applicant's father suffered from depression and experienced extreme emotional hardship as a result of their separation during those two decades. Additionally, we note that the applicant's father is not without emotional support and strong family ties in the United States, as the Form I-601 indicates that the applicant's father lives at the same residence as the applicant's younger brother and sister. Although the applicant's father indicated, at his psychological interview, that he cannot rely on his younger children for support, there is no evidence to corroborate this. There are no letters or statements from the applicant or his siblings, indicating that they are even aware that their father is suffering from physical and mental health problems, and if they are away, why the applicant's siblings in the United States are unable to provide emotional or other support for their father. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). While we recognize that the applicant's father is undoubtedly distressed as a result of the separation from his eldest son, the applicant has not shown the emotional and physical hardship his father would suffer constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

We first review the record to determine whether the applicant has demonstrated extreme hardship to his father upon relocation to India. We observe that neither counsel nor the applicant's father address the possibility of the latter's relocation. However, we note that the psychological evaluation indicates that the applicant's father reported that he was born and resided in India until approximately the age of 40 in 1990 when he came to the United States. He reported being the second of seven siblings born in Punjab, India. Although by moving to India, the applicant's father would lose physical proximity to his two other children and grandchildren, he would be returning to the country of his nativity and where he still maintains very close ties, in particular the applicant. *See generally, Cervantes-Gonzalez*, 22 I&N Dec. at 567-68. Thus, while the applicant's father may have strong ties in the United States, the evidence indicates that he has similar ties in India, having lived there for more than half his life. There is no evidence to the contrary. Moreover, relocation does not necessarily mean a permanent separation from relatives in the United States. Again, we note that there are no statements from the applicant's immediate family members that would suggest that his family would be unable to visit him in India regularly.

After carefully reviewing the record, the AAO finds that it does not demonstrate that the applicant's citizen father would experience extreme hardship upon relocating to India. The applicant has not shown the hardship his father would suffer would be more than the common or typical result of a bar to admission.

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 his citizen father as required under section 212(h) and (i) of the Act. He, therefore, remains inadmissible to the United States under sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i) of the Act. Since the applicant failed to establish statutory eligibility for the

waivers under sections 212(h) and (i), the AAO finds that no purpose would be served in considering whether the applicant merits the waivers in the exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and (i) of the Act, the burden of proving eligibility remains entirely with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.