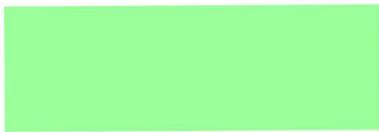


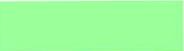


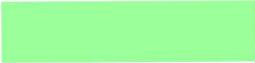
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAY 10 2013** Office: CHICAGO

FILE: 

IN RE: 

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

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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application will remain denied.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to reside in the United States with her U.S. citizen spouse, two U.S. citizen children, and lawful permanent resident parents.

In a decision, dated July 21, 2009, the field office director concluded that the applicant had failed to establish that her removal would cause extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated August 19, 2009, counsel stated that the field office director erred when he found that the applicant failed to establish that her U.S. citizen spouse would suffer extreme hardship if she were removed to India. Counsel stated that if the applicant is removed, then her spouse must decide to either stay in the United States and raise their two minor children alone or to relocate the entire family to India. Counsel stated that the applicant's spouse had been suffering from depression and anxiety associated with the applicant's possible removal. Counsel also stated that if the family relocated to India they would suffer extreme hardship because except for being born there, the applicant's spouse has no familial ties to India, and the applicant's spouse would not be able to find employment there.

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 . . . 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-
  - . . . .
  - (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).

We found in accordance with *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) and *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), that the applicant's May 2000 conviction in Illinois for theft under 720 ILCS 5/16(a)(1), which required the intent to permanently take another person's property, involved moral turpitude and rendered the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.") and *People v. Harden*, 42 Ill.2d 301, 303 (1969), (stating that theft in Illinois is committed when a person knowingly obtains or exerts unauthorized control over property of the owner, and intends to deprive the owner permanently of the use or benefit of the property).

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. However, we found in our decision that the applicant failed to establish that she qualified for a waiver of inadmissibility.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

...

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's U.S. citizen husband and children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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, 565-66 (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 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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).

The record of hardship on appeal included: counsel's brief, a psychological evaluation, statements from friends, employment letters for the applicant's spouse, and a letter from the applicant's child's doctor.

Counsel claimed that the applicant's spouse was suffering extreme emotional hardship as a result of the applicant's potential removal from the United States in the form of depression, extreme anxiety, and panic attacks. Counsel also claimed that in the applicant's absence her spouse would struggle emotionally and financially to care for his two minor children and his elderly parents, all duties that his wife attended to while he worked as the sole financial supporter of his family. Counsel's claims were supported by the psychological evaluation submitted as part of the record, which corroborated the emotional hardship claims and indicated that the applicant's spouse had been receiving ongoing psychological treatment for at least four months. In addition, the statements from friends and the applicant's spouse's employer supported the applicant's emotional and financial hardship claims. We found that the applicant established that her husband would suffer extreme hardship as a result of separation, but did not establish that her husband would suffer extreme hardship upon relocation.

On appeal, counsel claimed that relocation would cause emotional, financial, and medical hardship to the applicant's family. Counsel stated that conditions in India are dangerous in that there have been numerous terrorist attacks in the country. He also stated that relocation would cause emotional and financial hardship in that the applicant's spouse would have to leave his familial and financial ties in the United States, a country where he has lived for over fifteen years. Counsel claimed that the applicant's spouse would suffer financially in India because he would not be able to find comparable employment there because of high unemployment, the absence of any social ties to the country, and his lack of fluency in Hindi. Finally, counsel claimed that the applicant's infant daughter would suffer medically as a result of relocation because she was born with a heart murmur and requires follow-up care, which could not be provided at the same level as it was being provided in the United States. The psychological evaluation corroborated the claims made by counsel regarding the applicant's spouse's significant ties to the United States and a letter from the applicant's child's doctor showed that the applicant's child required cardiac clinic visits in the future due to a heart murmur.

Notwithstanding this evidence, we found that the applicant had not shown that her spouse would suffer extreme hardship as a result of relocation. We acknowledged the applicant's spouse's financial and familial ties to the United States, and that his daughter suffers from a medical condition, but noted that no documentation was submitted to support the claims by counsel regarding the country conditions in India. Nothing in the record supported the assertions made by counsel regarding the applicant's spouse's ability, as an electrical engineer, to find employment in India; a significant threat of a terrorist attack in India or other safety issues; and medical treatment that would not be available to the applicant's child in India. We also noted that although the applicant's spouse had lived in the United States for over 15 years, he was born in India and continued to have cultural ties to the country, evidenced by the statements in the record reflecting his family's involvement in the Hindi community in Chicago.

On motion, counsel submits a brief, articles regarding conditions in India, financial documents, and medical documents.

Counsel asserts that he cited to the CIA World Factbook in his appellate brief, which states that India is one of the poorest countries in the world and has high unemployment. This information fails to reflect the hardships someone with the applicant's spouse's background would experience upon relocation. The record does not indicate that an individual with a professional background in electrical engineering, who was born in India and has cultural ties to the country, would be unlikely to find employment in the country. We acknowledge that there is significant poverty in India, but it does not necessarily follow that any waiver applicant would experience poverty there. The applicant's spouse is a highly educated individual with significant experience as an electrical engineer.

Counsel also asserts that the applicant's family will be unsafe in India because of the frequent terrorist attacks in the country. Although numerous news articles have been submitted regarding attacks in India, we cannot find that these incidents would equate to the applicant's family experiencing extreme hardship upon relocation. These news articles do not indicate that the terrorist threat is so severe as to be causing ongoing hardships to any person living in India, and there is insufficient basis in the record to conclude that the applicant's family would be at greater risk of suffering harm from terrorist attacks

Counsel states further that the applicant's parents will suffer extreme hardship as a result of relocation. The applicant's parents became lawful permanent residents in 2010, but counsel states they had been living in the United States for 22 years. He states that if the applicant's parents relocate to India they will have to give up their lawful permanent residence in the United States and separate from their other child and his family. Counsel states that the applicant is the caretaker for her parents, that her parents live with the applicant and her family, and that they have been suffering depression and anxiety as a result of the applicant's immigration status. A medical letter submitted on motion indicates that the applicant's mother is suffering depression and anxiety over the possibility of her only daughter and caretaker having to relocate to India. We note that on appeal, no assertions were made regarding hardships to the applicant's mother. We find that the current record does not indicate that the applicant's mother and/or father would suffer extreme hardship as a result of separation or relocation. Although the record does indicate that the applicant is her parents' caretaker, it does not show how close of relationship the applicant's parents have with their other child, who they would separate from upon relocation. Furthermore, we acknowledge that the applicant's mother is suffering emotional hardship, but the current record does not indicate that this hardship is more than the common hardship. The medical letter does not reflect any symptoms the applicant's mother is experiencing, the severity of these symptoms, whether there has been any treatment prescribed for these symptoms, and/or how these problems are affecting her daily functioning. Therefore, we find that the record does not establish that the applicant's parents would suffer extreme hardship as a result of the applicant's inadmissibility.

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(s) in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. After a careful review of the record, it is concluded that the applicant has failed to establish that she is eligible for a waiver. Thus, the motion will be granted, but the underlying application will remain denied.

**ORDER:** The motion is granted and the underlying motion remains denied.