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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**



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FILE:



Office: SACRAMENTO

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APR 16 2010

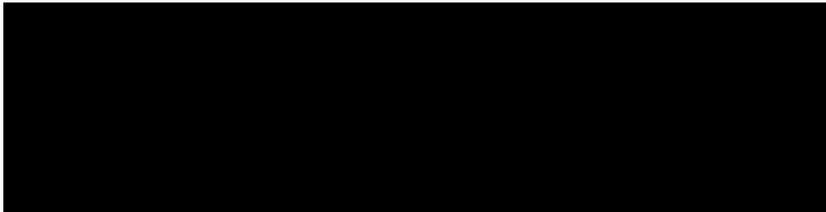
IN RE:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Sacramento, California, denied the application for waiver of inadmissibility, which was appealed to the Administrative Appeals Office (AAO). On appeal, the decision of the field office director was withdrawn and the matter was remanded to the field office director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. The Field Office Director subsequently approved the Form I-130 but denied the waiver application; said denial was certified to the AAO for review. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant, a native and citizen of India, misrepresented a material fact when he applied for a P-3, nonimmigrant visa, at the U.S. Consulate in New Delhi, India in January 7 2007. Specifically, he asserted that he was married, when in fact, he had never been married. *Record of Deportable/Inadmissible Alien*, dated May 5, 2009 and *Attachment to I-601*, dated March 10, 2009. He was thus found inadmissible to the United States under 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 procured numerous immigration benefits, including a nonimmigrant visa and subsequent entry to the United States, by fraud and/or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to be able to remain in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 2, 2010.

On appeal, counsel for the applicant submits a brief, dated April 24, 2009, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

(i) 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).

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

The applicant must first establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. With respect to this criteria, the applicant's spouse contends that she will suffer emotional and financial hardship. In a declaration she states that she is unable to imagine her life without her spouse; were the applicant required to leave the United States, she asserts that she would further go into depression. She notes that she is currently under treatment for depression. In addition, although gainfully employed, the applicant's spouse contends that she is financially unstable, as she has accumulated debt totaling more than \$50,000 from credit cards and student loans and if the applicant is unable to reside in the United States and obtain gainful employment, she will suffer financial hardship. *Declaration of* [REDACTED] dated April 21, 2009.

To support the applicant's spouse's assertions with respect to the emotional hardship she will experience if her spouse is unable to remain in the United States, a letter has been provided by [REDACTED], who confirms that the applicant's spouse is suffering from Major Depressive Disorder and has been prescribed the antidepressant Lexapro. [REDACTED] further notes that she and the applicant's spouse's treating physician, [REDACTED] are both monitoring the applicant's spouse's mental health situation and its progress. *Letter from* [REDACTED], dated April 16, 2009. The record further reflects that due to her mental health situation, the applicant's spouse has

taken leave under the Family and Medical Leave Act of 1993 and is undergoing counseling. *See Family Care/Medical Leave Request/Notice*, dated April 21, 2009. Finally, documentation has been provided establishing that the applicant's spouse has been prescribed numerous medications, including Ranexa for the treatment of angina, and Amitriptyline for the treatment of depression. *Prescription Profile*, dated March 1, 2009 and *Letter from Blue Shield of California*, dated February 3, 2009.

With respect to the financial hardship referenced by the applicant's spouse, evidence has been provided to substantiate the applicant's spouse's claim that she is in debt and is past due on certain bills. *Letter from* [REDACTED] dated February 19, 2009. Moreover, documentation has been provided establishing the applicant's past employment in India, to support the assertion that were he to relocate to India, he would be unable to assist his spouse with the financial debt as salaries in India are very low and alternatively, were he permitted to remain in the United States, he would likely be able to obtain gainful employment to assist in the household finances based on his talents as a singer and Bhangra player. *Letter from* [REDACTED] [REDACTED] dated October 15, 2008.

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. To begin, the applicant's spouse asserts that she would suffer emotional hardship, as she has resided in the United States since 1989 with her family; the United States is her home and she has grown accustomed to the American lifestyle. The applicant's spouse further references the emotional hardships she would face in India, due to unfamiliarity with the country, culture, language. *Supra* at 1-2.

In addition, the applicant's spouse contends that she would experience professional disruption, as she has been gainfully employed since November 2006 with the State of California Secretary of State's Office as a Program Technician, earning decent pay, good benefits and a retirement for the future, but were she to relocate abroad, she would lose the position. Moreover, the applicant's spouse asserts that she would suffer financial hardship in India due to the substandard economy, thereby causing hardship for her as she would not be able to live in the manner to which she is accustomed, and she would be unable to pay off her current debt. *Supra* at 1-2. Finally, the applicant's spouse references the fear she would feel in India, due to terrorist activity. *Letter from* [REDACTED] dated March 10, 2009.

Documentation has been provided establishing the problematic country conditions in India, including the high threat of terrorism, concerns for women traveling alone in India and the lack of quality medical care. *Country Specific Information-India, U.S. Department of State*, dated February 17, 2010. The AAO further notes that the U.S. Department of State has issued a Travel Alert for

U.S. citizens and lawful permanent residents planning travel to India, due to ongoing security concerns and particularly, the threat of terrorist attacks, in India. *Travel Alert-India, U.S. Department of State*, dated January 29, 2010.

The record reflects that the applicant's spouse would be forced to relocate to a country to which she is not familiar. She would have to leave her support network of family, including her parents, two siblings, cousins, niece and nephew, her friends and her long-term gainful employment, and she would be concerned about her safety at all times in India. In addition, she would not be able to maintain her quality of living and would be at risk of worsening her current debt situation due to the substandard economy in India and her inability to speak the language. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the

exercise of discretion appears to be in the best interests of the country. “ *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant’s U.S. citizen spouse would face if the applicant were to reside in India, regardless of whether she accompanied the applicant or remained in the United States, community ties, the applicant’s apparent lack of a criminal record, support letters, and the passage of more than three years since the applicant’s fraud and/or willful misrepresentation. The unfavorable factors in this matter are the applicant’s fraud and/or willful misrepresentation when procuring a nonimmigrant visa and subsequent entry to the United States, and unauthorized presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.