

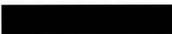
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



715

DATE: Office: TAMPA, FL FILE: 
AUG 01 2011

IN RE: Applicant: 

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:

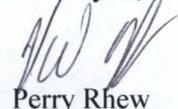


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 application was denied by the Interim District Director, Tampa, Florida, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is married to a lawful permanent resident and has a U.S. citizen child and a lawful permanent resident child. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The interim district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Interim District Director*, dated June 26, 2007.

On appeal, counsel asserts that gender and cultural bias affected the interim district director's decision and she did not consider precedent case law. *Form I-290B*, received July 24, 2007.

The record includes, but is not limited to, counsel's brief, prior counsel's I-601 brief, letters of support, and statements from the applicant and her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

The record reflects that the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, based on a Form I-130, Petition for Alien Relative, in which a fraudulent marriage certificate and fraudulent birth certificate were submitted. Counsel asserts that an individual filed fraudulent papers without the applicant's knowledge and consent. *Brief in Support of Appeal*, dated August 22, 2007. However, the applicant swore under oath at her Form I-485 interview that she signed the Form I-485. In signing the Form I-485 the applicant certified, under penalty of perjury, that the Form I-485 and all accompanying evidence was true and correct. The applicant willfully misrepresented on her Form I-485 that she was married to a U.S. citizen. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act as she sought to procure admission (adjustment of status) to the United States based on a willful misrepresentation.

On appeal, counsel states that it would be impermissibly retroactive to apply 212(a)(6)(C)(i) to the applicant's conduct in submitting the Form I485, as that conduct occurred prior to the effective date of the misrepresentation provision found at section 212(a)(6)(C)(i) of the Act. Counsel's argument is not persuasive. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board stated

that a statute is not retroactive if:

[I]t does not impair rights a party possessed when he or she acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. More specifically, an intervening statute that either alters jurisdiction or affects prospective injunctive relief generally does not raise retroactivity concerns, and, thus, presumptively is to be applied in pending cases. [citation omitted]. Likewise, the Attorney General concluded [in *Matter of Soriano*, 21 I&N Dec. 516 (BIA 1996)] that the new provisions in section 212(c) applied to pending cases because the new legislation acted to withdraw her authority to grant prospective relief; it did not speak to the rights of the affected party. [citation omitted]. The effect was therefore to alter both jurisdiction and the availability of prospective relief to the alien. [citation omitted]. *Cervantes-Gonzalez* at 564.

The BIA held in *Cervantes-Gonzalez* that a request for an INA § 212(i) waiver of the Act is a request for prospective relief and as such its restrictions may be applied to conduct which predates passage of the current statute. As is required, the AAO will rely on *Cervantes-Gonzalez* here.

Counsel also contends that the applicant established extreme hardship to her U.S. citizen spouse and is therefore eligible for a waiver of inadmissibility pursuant to section § 212(i)(1) of the Act which provides, in pertinent part:

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (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 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*, 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.

Counsel asserts that gender and cultural bias affected the interim district director's decision and she did not consider precedent case law. *Form I-290B*. The AAO notes that its review of the case is *de novo* and it considers the relevant case law in its decision.

The record reflects that the applicant's daughter is 23 years old and her son is 16 years old. Prior counsel stated that the applicant's son would face a change of geography, climate, culture, language and social conditions in India; he will be deprived of educational and economic opportunities, health services and other benefits of being a U.S. citizen; the applicant's children face separation from their other relatives in the United States; and the applicant's children would face a completely different school system in India. *Response to Request for Evidence*, February 28, 2007. As noted above, children are not considered qualifying relatives for purposes of a waiver under section 212(i) of the Act. However, the AAO will consider hardship to the children insofar as it creates a hardship for the qualifying relative, in this case the applicant's spouse. While the AAO notes that the applicant's children would likely experience some hardship in relocating to India, there is nothing in the record to demonstrate that this would impose hardship on the applicant's spouse that goes beyond the normal hardship of relocation.

Both prior and current counsel also state that the applicant's spouse has stomach ulcers and hemorrhoids which cause him pain and discomfort. *Id.*, *Brief in Support of Appeal*. The applicant's spouse states that he is undergoing regular medical treatment and his medical problems have resulted in weight loss and other physical discomforts. *Applicant's Spouse's Statement*, undated. The record does not include documentary evidence, such as medical records or a statement from a treating physician, of the applicant's spouse's claimed medical problems. Further, even assuming that the applicant's spouse suffers from medical conditions there is no evidence that he could not receive treatment in India. The AAO notes that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). The record does not include other evidence of hardship. The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that the applicant's spouse would experience extreme hardship upon relocating to India.

Counsel states that the applicant's spouse's stomach ulcers and hemorrhoids cause him pain and discomfort and prevent him from handling household chores; there is a significant financial impact, which includes hiring a nanny or paying for daycare; the cost of replacing a homemaker is more than \$30,000 annually; and housewives contribute to the financial and emotional support of the home far more than a paycheck would indicate. *Brief in Support of Appeal*. Counsel also states that the applicant would face humiliation and disgrace as a separated wife in India. *Form I-290B*.

Prior counsel stated that the applicant and her spouse have been married for twenty years; the applicant's spouse is the sole bread winner and his income is moderate; the applicant was responsible for handling the family's finances and spent limited resources wisely; the applicant monitors her spouse's health condition by preparing his food and medication; the applicant's spouse

children depend on her for everything; it will be unbearable for the applicant's spouse to see the applicant face embarrassing and unpleasant conditions from her relatives and Indian society in general; the applicant's spouse believes that his life would be miserable and the well-being of his children would be in jeopardy; and the applicant is close to her son and it will be heartbreaking for them to be separated. *Response to Request for Evidence*, dated February 28, 2007. In their statements, the applicant and her spouse make claims similar to those made by counsel and prior counsel. As noted above, the record does not include any documentary evidence of the applicant's spouse's claimed medical problems, such as medical records or a statement from a treating physician. In regard to financial hardship, the record does not include evidence such as the applicant's spouse's income and expenses. The record does not include documentary evidence that the applicant would be treated poorly in India due to being on her own, or evidence of the hardship that this would cause the applicant's spouse.

As noted previously, the applicant has two children, a daughter who is 23 year old and a son who is 16 years old. As previously discussed, the AAO recognizes family separation as a factor in determining extreme hardship and has reviewed the record for evidence that would establish the impact that separation would have on the applicant's spouse. While the AAO acknowledges that the applicant's spouse would face difficulty as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the emotional distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish either the financial or emotional impacts of separation on the applicant's spouse, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and he remains in the United States.

The record does not include other evidence of hardship. The AAO finds that the applicant's spouse would experience difficulties due to separation from the applicant, however, the record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States.

A complete review of the documentation in the record fails to establish that the cumulative effect of hardship would rise to the level of extreme. 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(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.