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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

45

[Redacted]

Date: AUG 18 2011

Office: [Redacted]

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[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 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,

*Maria Feh*

B/

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York, 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 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 making misrepresentations on his adjustment application, dated July 13, 2005, regarding his criminal record and for presenting a photo-switched passport with a counterfeit non-immigrant visa on February 12, 1991. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his family.

The record shows that the applicant was convicted for operating a motor vehicle under the influence of alcohol on April 13, 2004. The District Director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

In a decision dated February 27, 2009, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated February 27, 2009.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney asserts that the applicant's qualifying relative will suffer emotional, psychological, medical and financial hardships in the event she is separated from the applicant. Moreover, the applicant's attorney contends that the qualifying spouse would be left as a single parent if the applicant returns to [REDACTED] and would be the sole support for their child.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief from the applicant's attorney, a psychological evaluation, a medical document, the applicant's birth certificate, an affidavit from the qualifying spouse, country condition materials, a certificate of disposition for the applicant's conviction, a marriage certificate, a birth certificate for the applicant and qualifying spouse's child, a judgment of divorce regarding the applicant's prior marriage, the qualifying spouse's naturalization certificate, financial documentation and other documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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.

Section 212(i) of the Act provides that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's wife is the only qualifying relative in this case. 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-Moralez*, 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.

In the present case, the record reflects that the applicant made misrepresentations in his adjustment application, dated July 13, 2005, by failing to disclose his criminal conviction and also presented a photo-substituted passport with a fraudulent visa when he entered the United States on February 12, 1991. The applicant does not contest his inadmissibility. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for making material misrepresentations and for entering the United States through fraud or misrepresentation.

The applicant’s qualifying relative is his wife, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, an appeal brief from the applicant’s attorney, a psychological evaluation, a medical document, an affidavit from the qualifying spouse, country condition materials, a birth certificate for the applicant and qualifying spouse’s child, financial documentation and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant’s attorney asserts that the applicant’s qualifying relative will suffer emotional, psychological, medical and financial hardships in the event she is separated from

the applicant. Moreover, the applicant's attorney contends that the qualifying spouse would be left as a single parent if the applicant returns to India.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the qualifying spouse would suffer from psychological and emotional hardships as a result of her separation from the applicant. With respect to the qualifying spouse's psychological hardships, the record contains a psychological evaluation and an affidavit from the qualifying spouse. In her affidavit, the qualifying spouse asserts that she "cannot imagine [her] life without him." She fails to provide any detail regarding specific psychological hardships in her affidavit. She does, however, indicate her fear of the applicant's departure because she and their child are "totally dependent on him." The psychological evaluation states that the qualifying spouse "appeared depressed, dismayed and concerned in discussing her husband's potential deportation." The psychologist recommended that the qualifying spouse seek further psychotherapy and possibly medication, yet there is no evidence in the record that the qualifying spouse has sought further assistance with her emotional and psychological issues. The psychologist notes that the qualifying spouse did not feel comfortable speaking with a psychologist or taking any medications for cultural reasons, but it is the qualifying spouse's "intent [is] to seek out and explore such treatment now." Although the input of any mental health professional is respected and valuable, the record fails to reflect an ongoing relationship between the mental health professional and the qualifying spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the evidence provided failed to provide detail or supporting evidence explaining how her emotional and psychological hardships are outside the ordinary consequences of removal. Although the AAO recognizes that the applicant's spouse has been diagnosed with depression, the record does not establish that her condition is severe enough to affect her daily activities or ability to work such that it would rise to the level of extreme hardship.

The applicant's attorney also claims that the applicant's wife will also encounter a medical hardship upon separation from the applicant. The record contains a medical form document with a handwritten note by a doctor indicating the qualifying spouse was diagnosed with "hyper thyroid, which make her very fatigue and depressed." This evidence fails to provide any detail regarding the qualifying spouse's condition and the frequency of her symptoms. The psychologist's evaluation notes that the qualifying spouse reported to her that she takes medication for her thyroid problem. However, her doctor's form does not indicate that the qualifying spouse is taking medication or otherwise provide sufficient detail about her condition.

Further, the applicant's attorney asserts that the qualifying spouse is the "sole support of the family" and that the qualifying spouse told the psychologist that she "does not feel that she has the skill set to be employable right now given her overwhelming feelings of depression and anxiety." The record contains financial documentation submitted with Form I-485. However, no current financial documentation was submitted with the appeal. Nonetheless, it appears that the applicant is the sole financial support for the family, as evidenced through tax returns and the affidavit from the qualifying spouse. However, the psychologist's affidavit indicates that the qualifying spouse has a bachelor's degree in psychology and has taken all the requisite courses to be a registered nurse but

has not passed her licensing exam. The qualifying spouse failed to indicate whether she would be able to work using her bachelor's degree in psychology or in the nursing field.

The psychologist's affidavit also indicates that the qualifying spouse stated that "[REDACTED] is a backward, third world country with poor sanitary and living conditions." She also "wonders about the quality of healthcare available in [REDACTED]" and her ability to obtain her thyroid medication. Further, she told the psychologist that she views education in India as "abysmal." She also told the psychologist that she fears for her "physical safety due to her husband's religion." The record contains various country condition documents indicating the issues in [REDACTED] including pollution, disease and healthcare. However, the applicant did not address the area in [REDACTED] where he would live if he was removed and did not specifically address how the living conditions in [REDACTED] would affect the qualifying spouse, should she choose to relocate. Further, there is no specific evidence that the qualifying spouse would be unable to obtain her medication, and there was also no documentary proof indicating that she required such medication. With regard to her safety concerns, there was no country condition information provided to demonstrate that her safety would be jeopardized due to her husband's religion.

While the AAO recognizes that the qualifying spouse may encounter a decreased standard of living if she relocated to India with the applicant, she was likely previously aware that her husband could be removed since he had been ordered removed over ten years prior to the date of their marriage. As such, the qualifying spouse had reason to expect at the time they were married that the applicant may not be able to live with her in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. Further, in his brief, the attorney indicates that the qualifying spouse has "no real friends and does not communicate with her family." The qualifying spouse indicates in her affidavit that her brother and his family also live in the United States but she does not specify where he resides. It does not appear that the qualifying spouse has strong family ties to the United States such that relocating to India would result in extreme emotional hardship.

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 United States citizen spouse as required under section 212(i) of the Act. 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.