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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  
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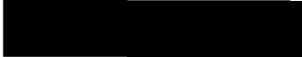


415

DATE: **DEC 07 2011**

Office: NEW YORK, NEW YORK  
(GARDEN CITY)

FILE: 

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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native 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 attempting to obtain an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated June 5, 2009.

On appeal, counsel asserts that the denial of the applicant's waiver application was in error as the applicant has demonstrated that refusal of his admission to the United States would result in extreme hardship to his U.S. citizen spouse. *Form I-290B, Notice of Appeal or Motion*, dated July 2, 2009; *see also counsel's brief*.

The record includes, but is not limited to, statements from the applicant's spouse; counsel's brief; a psychological evaluation of the applicant and his spouse; and a medical form from [REDACTED] relating to the applicant's daughter. The entire record was reviewed and all relevant evidence considered in reaching 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 on March 27, 1991, the applicant sought admission into the United States as a returning temporary resident alien by presenting a passport containing a counterfeit temporary resident stamp with an unrelated alien number. In that the applicant attempted to procure entry into the United States through fraud or the willful misrepresentation of a material fact, he is barred from admission pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (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 or, in the case of a VAWA self-petitioner, 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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant's spouse would experience emotional and financial hardship if she remains in the United States without the applicant. Counsel asserts that the applicant is the sole source of financial support for his family and that as he left India 18 years ago and lacks employment skills and education, he might not be able to earn enough income in India to support himself, let alone financially assist his family. Counsel also contends that the applicant's spouse has no employment experience outside of the home and that she would not be able to support herself, her two children and the applicant in India. Counsel further asserts that the applicant's spouse and children would experience separation anxiety if the applicant is removed from the United States. He states that the applicant's spouse would have to work two jobs to make up for the loss of the applicant's income, which will adversely affect her children because there would be no parent at home to guide them.

In her April 27, 2009 statement, the applicant's spouse asserts that the applicant is the sole breadwinner for the family and that he is the best husband and the best father for her children. The applicant's spouse asserts that she will suffer financial, social and economic hardship if the applicant is removed from the United States.

A July 26, 2009, evaluation prepared by [REDACTED] indicates that the applicant and his spouse participated in a clinical assessment to discuss and address the symptoms of anxiety and depression they are experiencing. [REDACTED] states that the applicant's spouse believes that removal of the applicant would create an extreme hardship for the family. [REDACTED] states that the applicant's spouse reported to her that she is worried, anxious and frightened over the uncertainty of her family's future; that she has difficulty falling asleep and staying asleep, and that she is suffering from debilitating headaches. [REDACTED] reports that the applicant's spouse's headaches are being monitored and that she remains under a physician's care. [REDACTED] states that the applicant's spouse also reported to her that she has never worked outside the home;

that she would have difficulty finding a job to support herself and her children, as well as meet the family's other financial obligations; and that she is concerned that she and her children will be homeless.

The AAO notes the evaluation prepared by [REDACTED]. However, although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] report fails to provide the type of detailed mental health analysis normally associated with a psychological evaluation. It fails to identify any specific mental health impacts of separation on the applicant's spouse, indicate the severity of these impacts or specify how they would affect her ability to function on a daily basis.

The AAO also notes that although [REDACTED] evaluation indicates that the applicant's spouse is suffering from debilitating headaches, there is nothing in the record that documents she suffers from such headaches or that she is currently being treated for them. Going on record without supporting documentation is not sufficient to 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)). Accordingly, the AAO finds Ms. Garcia's evaluation to be of limited value to a determination of extreme hardship in this proceeding.

The AAO further notes the applicant's spouse's claims that the applicant is the sole financial provider for the family and that his removal would result in financial hardship to her. However, the record lacks any evidence of the applicant's employment and income. While counsel claims that the applicant lacks the job skills and education to get a job in India, in the absence of any documentation relating to the applicant's employment history during the 18 years he has been in the United States, the record fails to establish that he has not gained any job skills that would assist him in obtaining employment in India. The record also lacks any evidence of the family's expenses or demonstrates that the applicant's spouse is dependent on the applicant for financial support. The record does not offer evidence to show that the applicant's spouse is unable or incapable of obtaining a job to support herself and her family. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, Id.* We note that the applicant's spouse claims that both her family and the applicant's family live in the United States, there is nothing in the record that indicates why she would not be able to seek their assistance in the applicant's absence.

As to the claim of hardship to the applicant's children, we note that children are not qualifying relatives under section 212(i). Any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. However, other than the statements from the applicant's spouse, counsel and [REDACTED] the record lacks any evidence that would demonstrate the hardships that the applicant's children would suffer if separated from their father or that these hardships would result in hardship to their mother, the only qualifying relative in this case. The AAO also notes that the record does not contain documentation, e.g. birth certificates, to establish that the applicant has two children who will be impacted by separation.

Accordingly, upon a review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she continues to reside in the United States without the applicant.

On appeal, counsel asserts that relocating to India would result in extreme hardship to the applicant's spouse. Counsel states that the applicant's spouse has been residing in the United States for a long time, that all her family (her parents and siblings) reside in the United States, that she has significant family ties to the United States and except for the applicant, she has no ties to India. Counsel also asserts that the applicant's spouse and her children are fully assimilated into the U.S. culture and will undergo culture shock if they relocate to India to be with the applicant. He further states that the applicant and his spouse would have limited employment opportunities in India and no family to rely on for assistance.

states that the applicant's spouse reported to her that the applicant is from a farming community, with a scarcity of basic necessities, an unsanitary environment, poor air quality, and substandard medical care. She asserts that the applicant's spouse, who suffers from depression and debilitating headaches, would be unlikely to receive the medical care she needs there. She also states that because of the poor air quality, the applicant's spouse is concerned that her daughter, who has asthma, would not be able to obtain adequate medical treatment.

While the AAO notes the preceding claims regarding the impacts of relocation on the applicant's spouse, we do not find the record to support them. The record does not establish that the applicant's spouse suffers from debilitating headaches or that her daughter suffers from asthma. The record does not document any health concerns relating to the applicant's spouse and while it contains a medical record that establishes the applicant's daughter was hospitalized twice in 2007, it does not indicate the reason for her hospitalization or that her medical problems were not corrected at that time. The record also lacks documentary evidence, e.g., published materials on India's economy, unemployment, healthcare or the air quality, that establishes the applicant's spouse would not be able to obtain medical care for herself and her family, or that demonstrates that the applicant and her spouse would not be able to obtain employment in India that would allow them to support their family. The record, as previously discussed, also fails to establish that the applicant has not acquired job skills during his 18 years in the United States that would assist him in obtaining employment in India.

While the AAO acknowledges the difficulties created by relocating to another country, we find the record to offer insufficient proof that the applicant's spouse would experience extreme hardship if she relocated to India. Accordingly, the applicant has not established that a qualifying relative would suffer extreme hardship upon relocation.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, he has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a 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. *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.

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Page 7

**ORDER:** The appeal is dismissed.