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



**U.S. Citizenship  
and Immigration  
Services**



HS

DATE: **JUN 22 2011**

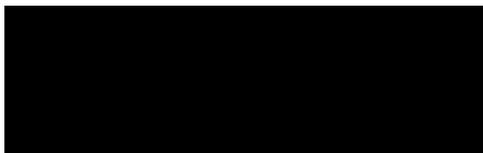
Office: SACRAMENTO, CA

FILE: 

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)

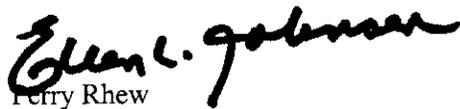
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Sacramento, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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 having sought a benefit under the Act through fraud or willful misrepresentation. He is the spouse and father of U.S. citizens. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that although the applicant had established that the bar to his admission would impose extreme hardship on a qualifying relative, he did not merit a favorable exercise of the Attorney General's (now Secretary of Homeland Security) discretion. The Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated September 17, 2010.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant did not merit a favorable exercise of discretion as the positive factors in his case outweigh the negative. *Counsel's brief on appeal*, dated November 3, 2010.

The record of proceeding contains, but is not limited to, the following evidence: counsel's briefs; statements from the applicant, his spouse, his mother-in-law, his brother-in-law, his son and daughter; psychological evaluations of the applicant's spouse and children; medical documentation relating to the applicant and his mother-in-law; printouts of online information on various prescription medications; W-2 forms and earnings statements for the applicant's spouse; tax returns; country conditions materials relating to India; documentation of the applicant's and his spouse's financial obligations; school records for the applicant's children; copies of donations made by the applicant; bank statements; and support letters from friends, family and a former employer of the applicant. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

The record reflects that at the time of his May 9, 1991 arrival in the United States without documents, the applicant provided U.S. immigration officials with a false identity [REDACTED]. It also indicates that the applicant filed for asylum in 1992 under yet another false identity ([REDACTED]) and did not provide truthful testimony in support of his application. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having

sought benefits under the Act through fraud or the willful misrepresentation of a material fact.<sup>1</sup> The applicant does not contest this finding.

Because the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, he must obtain a waiver under section 212(i) of the Act, which states:

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.

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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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).

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<sup>1</sup> The Field Office Director’s decision also indicates that the applicant submitted a fraudulent Form I-687, Application for Status as a Temporary Resident, in 1992. The AAO notes, however, section 245A(c)(5) prohibits USCIS from considering information contained in a legalization file for any purpose other than a legalization determination. Accordingly, the Field Office Director erred in relying on this information in his decision.

However, though hardships may not be extreme when considered abstractly or individually, the BIA 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 matter, the AAO does not find it necessary to determine whether the record establishes that the applicant’s spouse would suffer extreme hardship as a result of his inadmissibility. The Field Office Director previously reached this conclusion and the record supports his finding. We will, therefore, limit our discussion to the extent to which the record establishes that a favorable exercise of the Attorney General’s (now Secretary’s) discretion is warranted in the present case.

With regard to discretionary matters, the applicant 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). Factors to be considered in the exercise of discretion are set forth in *Matter of Menendez-Morales*, which states:

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).

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 adverse factors in the present case are the applicant's misrepresentations made at the port-of-entry and on the asylum application he filed in 1992, his 1997 conviction for Fraudulent Use of Access Card in violation of California Penal Code § 484g(a)/487; and his periods of unlawful employment and residence in the United States. The mitigating factors are the applicant's U.S. citizen spouse and children; the extreme hardship to his spouse if the waiver application is denied; his mother-in-law's mental and physical health problems; his consistent record of paying taxes; his financial donations to his temple and related religious organizations; his involvement in his temple's activities; his cooperation with law enforcement authorities in the prosecution of two individuals who robbed him, as documented by records from the Sacramento County Sheriff's Department; the absence of a criminal record or complaint since 1997; and the applicant's attributes as a good father, husband, neighbor and member of his community as asserted in the numerous statements provided by the applicant's family and friends.

The AAO finds the immigration violations committed by the applicant and his conviction for Fraudulent Use of Access Card to be serious in nature and does not condone them. However, we also note that the applicant's misrepresentations took place in 1991 and 1992, nearly 20 years ago, and that the events that led to his conviction in 1997 are nearly 15 years old. We also observe that the applicant's felony conviction was modified to a misdemeanor in 2006 based on the court's finding that he had complied with the conditions of his parole, paid all fines and fees, and repaid the \$23,000 he stole. When we consider the length of time that has passed since the applicant's misrepresentations and his criminal conviction, we find that these adverse factors are outweighed by the positive factors established by the record, such that a favorable exercise of discretion is warranted.

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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal will be sustained.