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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
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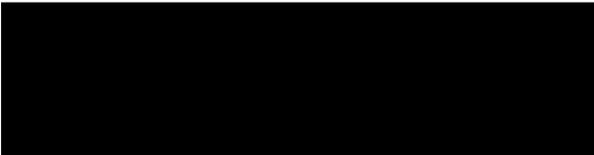
**MAY 04 2011**  
DATE: Office: NEW DELHI, INDIA

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, New Delhi, India, 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 Tibet who previously provided false names and birth dates in an attempt to obtain a visa to enter the United States. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 6, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship if the applicant is excluded from the United States. *Form I-290B*, received February 25, 2009.

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 indicates that the applicant presented false names and birth dates when applying for visas to enter the United States.

On appeal, counsel for the applicant suggests that the applicant's misrepresentation was not willful and submits expert testimony in the form of an affidavit from [REDACTED], of Stanford University. [REDACTED] explains that in Tibetan culture, based on their culture and the use of a Tibetan calendar, an individual would not know his or her specific day of birth or use a Gregorian calendar birth date. *Statement of [REDACTED]*, dated January 15, 2009. He further explains that, due to language differences and to political and social conflicts between Tibetans and the People's Republic of China, there may be discrepancies with respect to names and places and dates of birth. Finally, [REDACTED] explains that a Tibetan name might change with one's role and/or title.

In his visa interview in New Delhi, the applicant acknowledged that he had claimed different names and dates of birth on previous visa applications. The applicant stated that he changed his name in 1989 when he became a monk, but continued to use his birth name on Chinese documents as that was required in China. *Memorandum of Consular Interview*, dated September 18, 2008; *Transcript of Consular Interview*, dated September 5, 2008.

The AAO acknowledges [REDACTED] testimony. However, with respect to the applicant's birth date, although [REDACTED] explains that an exact Gregorian date might not be known or commonly used, this does not explain why the applicant in this case would use different dates on different visa applications. While [REDACTED] explains that a Tibetan name can change with someone's role and/or title, and the applicant claims to have changed his name upon becoming a monk, there is no evidence to establish this claim. Specifically, there is no documentary evidence showing what the applicant's birth name was or that the birth name was used on the visa application. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 burden of establishing admissibility to the United States remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet that burden.

Therefore, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: a statement from counsel; statements from the applicant's spouse; pay stubs and evidence of income for the applicant's spouse; a medical report on the applicant's spouse by [REDACTED], dated January 13, 2009; a chronology of medical treatments, submitted by [REDACTED] of the Center for Integrative Medicine; background periodicals on the medical conditions of the applicant's spouse; a psychiatric assessment of the applicant's spouse by [REDACTED], dated January 20, 2009; a statement from [REDACTED]; country conditions materials on India; statements from friends and associates of the applicant's spouse; a statement from the applicant's spouse's employer; and photographs of the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act 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 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 USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in

the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant’s qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO will first consider hardship upon relocation. Counsel asserts that the applicant’s spouse is over 60 years of age, has resided in the United States her entire life, does not speak any Indian languages, has no family ties in India, has an established career as a dentist in the United States and has significant community and family ties to the United States. Counsel also explains the applicant’s spouse’s medical history and the challenges it would pose to her if she were to relocate. She details that the applicant’s spouse has diverticulitis, which caused medical complications in recent visits to India, irritable bowel syndrome, depression and post-surgical menopausal difficulties.

The record contains substantial and probative evidence of the applicant’s spouse’s recent medical history, including a report from her doctor and a chronology of her medical conditions going back several years. This evidence establishes that she underwent a hysterectomy and bilateral oophorectomy in 2005. Complications arose after her surgery, including numerous somatic symptoms due to hormone imbalance, and including cardio irregularities, bladder infections and serious psychological illness. The applicant’s spouse entered psychiatric treatment for severe depression in 2006 and was placed on state-sanctioned disability for a period of ten months.

Counsel asserts, and statements from the applicant’s spouse’s doctors confirm, that travel to India to see her husband resulted in severe medical complications for her, including flare ups of her gastrointestinal disorders, and the inability to obtain her hormone medication – which had to be specifically compounded by pharmacies based on her daily blood samples. On a previous trip to India, the applicant’s spouse ran out of medication and was unable to locate a source for her medication in India. As a result, the applicant’s spouse had to have her medication shipped from the United States. Based on her medical history it would constitute a substantial hardship factor for the applicant’s spouse to disrupt her continuity of care in the United States.

The AAO finds this evidence persuasive, particularly when considered in light of the other hardships the applicants' spouse would face if she were to relocate. The record establishes that the applicant's spouse would experience extreme hardship if she were to relocate abroad with the spouse.

With regard to hardship upon separation, the evidence is sufficient to establish the applicant's spouse would experience extreme hardship. As discussed above, the applicant's spouse has experienced significant medical hardship since 2005. Counsel explains that the applicant's spouse, due to her physical condition, experienced a bout of serious depression in 2006.

The record contains a thorough and probative psychiatric report on the applicant's spouse by [REDACTED]. He explains that, after her hysterectomy and oophorectomy, the applicant's spouse was completely disabled with Major Depressive Disorder. *Statement of [REDACTED]*. He completed the medical reports necessary to have the applicant's spouse placed on state sanctioned disability for a period of 10 months, during which time her medical doctors sought to correct her hormonal imbalance through specialized treatment. [REDACTED] states that, once a person has been through an episode of depression of this magnitude, they are vulnerable to regression, and specifically asserts that separation from her spouse could put her at great physical and emotional risk from another episode of debilitating depression.

The AAO also observes that the applicant's spouse has been advised not to travel to India based on her previous medical reactions to the food and environment there. *Statement of [REDACTED]*, dated January 13, 2009.

The applicant's spouse has submitted statements describing her medical ordeal. She also states that having to travel to India in order to see her husband has impacted her employment. *Statement of the applicant's spouse*, dated December 24, 2008. The record also includes a statement from a previous employer of the applicant's spouse in which he states that her frequent and lengthy travel to India in order to see her spouse resulted in a disruption of the office's dental practice.

When these impacts are examined in aggregate, they establish that the applicant's spouse would experience extreme hardship due to separation from her spouse. As the record establishes that the applicant's spouse will experience extreme hardship, the AAO must now examine whether the applicant warrants a waiver as a matter of discretion.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h)(1)(B) 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 "balance 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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation about his identity. The favorable factors in this case include the presence of the applicant's spouse, the medical condition of his spouse and the hardship she would suffer due to his inadmissibility, and the lack of any criminal record in the applicant's background. The favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The Field Office Director's decision will be withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.