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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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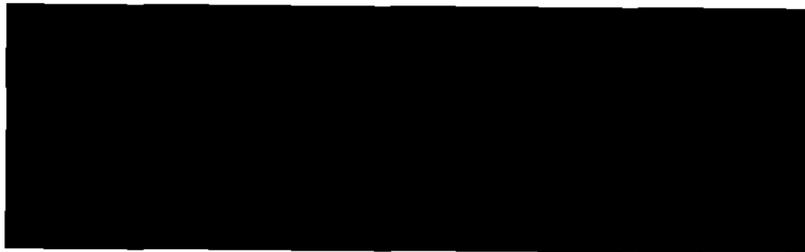
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Date: Office: LOS ANGELES (SAN BERNARDINO) FILE #

SEP 16 2011
IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO dismissal of the appeal will be upheld, and the underlying waiver application denied.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to his spouse and denied the waiver application accordingly. *Decision of the District Director*, dated February 14, 2007. The AAO subsequently found that the record did not contain sufficient evidence to show that any hardships the applicant's wife would face, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *Decision of the AAO*, dated April 21, 2009.

In his motion, counsel contends that news facts have arisen to establish extreme hardship. Specifically, counsel contends that the applicant's wife recently learned that she cannot relocate to India because the applicant's daughter's biological father has threatened to go to court to prevent their daughter from leaving the United States. The applicant has submitted a declaration in support of the motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In this case, the applicant's wife has submitted a new declaration to support her claim. Therefore, the motion to reopen will be granted.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, N [REDACTED] indicating they were married on April 5, 2003; two letters and a declaration from [REDACTED], a psycho-social report for Ms. [REDACTED] letters of support; copies of medical records; a letter from Ms. [REDACTED] employer; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the motion.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel does not now contest, that the applicant entered the United States in May 2000 using a photo-switched Portuguese passport. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 this case, the applicant’s wife, Ms. [REDACTED] states that she has a nine-year old daughter from a previous relationship as well as a four-year old son with her husband, the applicant. According to [REDACTED] she and her husband have lived together since her daughter was two years old and her daughter calls her husband [REDACTED] as he is essentially the only father she has known. [REDACTED] states that after her husband’s waiver application was denied, she inquired into what needed to be done to take her daughter out of the United States. She contends she was told she would be unable to take her daughter out of the country without the biological father’s written consent. [REDACTED] states she contacted the biological father, [REDACTED] and that he has now come back into her daughter’s life. According to Ms. [REDACTED] Tommy has reestablished parental ties and has been seeing her daughter about three times a month when she is at [REDACTED] mother’s house. She states that Tommy will not consent to her daughter’s removal from the United States for any reason. [REDACTED] contends that she cannot abandon her daughter by leaving to go to India in order to be with her husband. She further contends that her son and daughter have a very close relationship, and that if she relocated to India, she would be depriving her son of a relationship with his sister. She also states that her entire immediate family resides in the United States and she has no ties to India. On the other hand, [REDACTED] states that if she remains in the United States, she and her children would be deprived of a relationship with their father. [REDACTED] states that her husband has been her son’s primary caregiver. Ms. [REDACTED] states she is experiencing severe depression and anxiety, that she sees her family physician on a monthly basis for her conditions, and that he has prescribed her Zoloft. *Declaration of [REDACTED]* dated May 19, 2009; *see also Letters*

from [REDACTED], dated January 20, 2007, and undated.

A psycho-social report for [REDACTED] states that she is an emotionally vulnerable and fragile woman who is terrified of losing her husband, the primary caretaker of their two children. The psychologist states that [REDACTED] came to the United States when she was five years old and that both of her parents and her two sisters live in the United States. In addition, the psychologist states that [REDACTED] gave birth to her daughter while in high school and that the father abandoned her when she became pregnant. According to the psychologist, the biological father is not involved in supporting or raising their daughter, although his mother, the child's grandmother, is very close to her. The psychologist reports that the grandmother will not allow [REDACTED]'s daughter to be removed from the United States. Furthermore, the psychologist states that [REDACTED]'s mental health is impaired, that she has gained weight from non-stop nighttime eating and from non-stop worrying about the future. The psychologist contends that [REDACTED] may be experiencing a clinical anxiety disorder that could escalate into serious mental decompensation and psychotic symptoms. Moreover, the psychologist contends that Ms. [REDACTED]'s daughter suffers from asthma and ongoing bladder problems which may be related to diabetes which runs in the family. The psychologist further contends that the couple's son also has asthma. The psychologist diagnosed [REDACTED] with Generalized Anxiety Disorder. *Psycho-Social Report*, dated March 27, 2007.

Copies of medical records indicate that [REDACTED]'s daughter has problems with urinary incontinence and asthma, and that the couple's son has asthma.

Although the AAO is sympathetic to the family's circumstances, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Regarding the psycho-social report, counsel contends the AAO has improperly second-guessed the psychologist's conclusions and asserts that the Act does not explicitly require that a patient have an ongoing, continuing relationship with a mental health professional in order for a mental health assessment to be taken seriously. *Motion to Reopen and Reconsider* at 3, dated May 18, 2009. Although counsel is correct in that the Act does not require an ongoing relationship with a mental health professional, the AAO finds counsel's contention unpersuasive. The report in the record fails to provide sufficient details to adequately explain its conclusions. The report states that [REDACTED] reported non-stop nighttime eating, non-stop worrying about the future, loss of sleep, difficulty concentrating, fatigue that is overwhelming, and describes her as "anxious and emotionally fragile." *Psycho-Social Report, supra*, at 6, 8-9. The report states that "[i]nterview and observations suggest that Ms. [REDACTED] may be experiencing a clinical anxiety disorder" and that "it's possible that the anxiety could escalate to include serious mental decompensation and psychotic symptoms, at the most extreme." *Id.* at 7 (emphasis added). The psychologist notes that [REDACTED] has no known history of psychiatric or psychological disorders, denies any suicidal ideation, and has had no hallucinations or delusions. *Id.* at 6, 9-10. Nonetheless, the report concludes that "given the fragility of [REDACTED]'s mental health it would be likely that should [REDACTED] have to leave the country, she would suffer a complete mental break down, in the form of the severe clinical anxiety disorder that could easily lead to suicide." *Id.* at 9. Although the input of any mental health professional is respected and valuable, the psycho-social report in the record appears speculative. The

fact that the report was based on a single assessment further supports the AAO's decision to diminish the value of the report in evaluating hardship. To the extent [REDACTED] contends that she sees her family physician on a monthly basis for depression and anxiety and has been prescribed Zoloft, there is no evidence, such as a letter from her physician or a copy of her prescription, to corroborate her claim. In sum, the report does not show that [REDACTED]'s situation, or the symptoms she is experiencing, are extreme, unique, or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). The AAO further notes that as discussed in our previous decision, the record shows that [REDACTED] appears to have ample financial and emotional support and assistance should she remain in the United States without her husband. Therefore, [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record.

Furthermore, the record does not show [REDACTED] would suffer extreme hardship if she were to relocate to India to be with her husband. Although [REDACTED] that her daughter's biological father, [REDACTED], has reestablished parental ties to their daughter and will not allow her to be removed from the United States, there is no evidence to corroborate this claim. For instance, although the record contains a copy of the birth certificate for the couple's son, the record does not contain a copy of [REDACTED]'s daughter's birth certificate listing the name of her daughter's father. In addition, there is no letter, statement, or affidavit from [REDACTED] asserting he would not consent to his daughter's removal from the United States. Similarly, there is no statement from [REDACTED] mother who was purportedly close with [REDACTED] daughter even before [REDACTED] became involved in her life. Furthermore, there is no evidence that either [REDACTED] or his mother have any legal right to prevent the child's removal from the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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 application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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 AAO dismissal of the appeal is upheld and the underlying waiver application denied.

ORDER: The dismissal of the appeal is upheld and the underlying waiver application denied.