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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**

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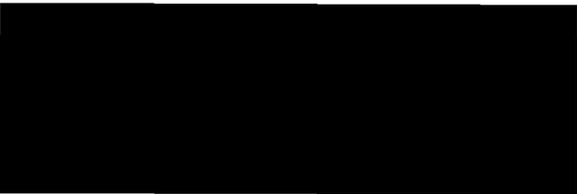


DATE: **SEP 28 2011** OFFICE: DETROIT, MI FILE:

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.

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 Field Office Director, Detroit, Michigan 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 attempted to enter the United States 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 found that the applicant had failed to establish that a qualifying relative would suffer extreme hardship as a result of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated June 9, 2010.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) failed to consider the totality of the circumstances in reaching a decision on the applicant's application and applied a higher hardship standard than that set forth in statute. *Form I-290B, Notice of Appeal or Motion*, dated July 8, 2010.

The record of proceeding contains, but is not limited to, the following evidence: counsel's brief and letters; statements from the applicant, and his spouse and her family members; medical documentation relating to the applicant's spouse; a printout of an online article on grand mal seizures; an employment letter for the applicant; copies of the applicant's spouse's high school diploma and training certificates; tax returns; a letter of support from the president of the Gurdwara Sahib; and country conditions materials relating to India. 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 on January 24, 1991, the applicant applied for admission to the United States using a photo-substituted passport and a fraudulent visa. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having sought a benefit under the Act through fraud or the willful misrepresentation of a material fact.

Section 212(i) of the Act states as follows:

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 an applicant or other family members can be considered only insofar as it results in hardship to the qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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).

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).

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.

The AAO now turns to the record to consider whether it establishes that the applicant’s inadmissibility would result in extreme hardship to a qualifying relative.

On appeal, counsel states that if the applicant’s spouse relocated to India, she would have to give up everything she has in the United States and would be returning to a country she no longer knows. Counsel asserts that the applicant’s spouse has spent most of her childhood and all of her adolescence and adulthood in the United States. He states that she no longer has any close ties to India as her immediate and extended family all live in the United States.

Counsel also reports that since the applicant filed the Form I-601, his spouse has developed a seizure disorder, which is characterized by a loss of consciousness. Counsel states that the cause of the applicant’s spouse’s condition has not yet been identified but that she has been prescribed Keppra, an anti-seizure medication and is consulting a neurologist and cardiologist in New York to develop a treatment plan. He further indicates that the applicant’s older daughter has breathing problems and must carry an inhaler with her at all times. Therefore, counsel contends, relocation to India would result in medical hardship for the applicant’s spouse and daughter. He asserts that the applicant’s spouse would suffer hardship if she were removed from the care of her current physicians, who are familiar with her medical history. Moreover, he states that the applicant and his spouse would be unable to afford the kind of specialized medical care required by the applicant’s spouse for her

seizure disorder, as well as that which would be needed by her older daughter should she develop full-blown asthma.

The monthly minimum wage in India, counsel asserts, is insufficient to provide for the basic needs of a worker and his family, much less the expensive medical care that would be required by the applicant's spouse. A return to India, counsel states, would place the applicant and his spouse in extreme poverty. He contends that they do not want to raise their children in such poverty or in a country without opportunity. Counsel reports that the gross per capita income in India is \$1,170 compared with \$47,240 in the United States. Further, he states that the applicant and his spouse do not have the wealthy family network in India that could provide them with assistance or job opportunities. He also notes that the applicant and his spouse are [REDACTED] and would be subject to discrimination as a result.

On appeal, the applicant's spouse states that if she returned to India she would not be able to achieve her goal of becoming a nurse as the educational system in India would not accept her U.S. high school diploma. She further asserts that if she and the applicant were to live in India, they would not be able to afford medical care for her seizures and that she is afraid of what would happen to her if her seizures are not treated. The applicant's spouse also states that she and her children would have to live with the applicant's parents in a small town in the Punjab. The applicant's spouse indicates that the applicant's family members are farmers, and that she and the applicant send them money so that they can live.

The record contains medical records relating to the applicant's spouse's emergency hospitalization in April 2010. This documentation indicates that she has been tentatively diagnosed with either a seizure disorder or complicated migraine condition, which causes her to lose consciousness. The records also reflect that the applicant's spouse has been advised against driving; that she is taking Keppra, an anti-seizure medication; and that she has been referred to both a cardiologist and neurologist in order to identify the basis for her medical problems. An appointment notice in the record indicates the applicant's spouse is seeing the recommended cardiologist.

The record also includes passages from the section on India from *Country Reports on Human Rights Practices – 2009*, published by the Department of State. These passages indicate that India continues to experience civil unrest in connection with the anti-Sikh riots of 1984 and that there is widespread discrimination against persons with physical and mental disabilities in employment, education and access to health care. The Department of State publication also reports that, in 2009, minimum wages in India were inadequate to provide a decent standard of living for a worker and his or her family. The record includes a comparative listing of gross per capita national incomes by country, published by the [REDACTED] and updated as of July 9, 2010, which supports counsel's claim that gross per capita income in the United States is \$47,240, while that in India is \$1,170.

Having considered the claims of hardship relating to the applicant's spouse's relocation to India, the AAO takes specific note of the applicant's spouse's significant ties to the United States; the length of her residence in the United States; her as yet undiagnosed medical condition, and the potential harm

that could result from an interruption in her current medical treatment program, as well as the loss of those physicians familiar with her medical history. We find that when these specific hardship factors, and the disruptions and difficulties normally created by relocation are considered in the aggregate, the applicant has established that his spouse would experience extreme hardship if she returns to India with him.

On appeal, counsel also contends that the applicant's spouse would suffer significant hardship if she remains in the United States. Counsel asserts that the applicant's spouse depends on the applicant emotionally, physically and financially, and that as she is struggling with a seizure disorder, it would be unimaginable for her to be the only provider for her two children. He states that in light of her health problems, she relies on the applicant more than ever to help care for their children and to be immediately available to help her should she need assistance. He notes that until her medical condition is better controlled, the applicant's spouse is not supposed to drive. Counsel also contends that the applicant plays an important role in seeing that his spouse receives the medical treatment she needs.

Counsel further asserts that the applicant's removal will result in the loss of the family's income. He states that the applicant's spouse is unemployed and is not sure that she will be able to return to work in light of her health problems. Therefore, counsel contends, the applicant's removal will either result in the applicant's spouse becoming dependent on her parents or returning to work at a severe cost to her health. Counsel states that even if the applicant's spouse returns to work, she is unlikely to find a well-paid job as she has only a high school education and little work experience.

Counsel also states that living separately from the applicant would be particularly difficult for his spouse given her and her community's traditional Sikh values. Such values, he contends, make her bond to the applicant especially deep and the negative consequences of separation, especially extreme.

The applicant's spouse states that this is a very difficult time for her and her family, and that she is worried about what will happen to them if the applicant is removed from the United States. She indicates that she is experiencing seizures for reasons that have not yet been identified and that, despite having recently moved to Michigan from New York, she continues to see her New York doctors as they are familiar with her case. The applicant's spouse also states that she is worried about her older daughter who has had breathing problems and has to travel with an inhaler.

The applicant's spouse further asserts that she does not know how she would survive financially in the applicant's absence as he is the only family member who is working. She states that finding employment to support her family would be difficult as she does not have much work experience. While she reports that she has been trained as a patient care technician, the applicant's spouse contends that she does not have enough experience working in this field to get a good job. The applicant's spouse also reports that since she is not currently working, she has started taking courses part-time at a local college to fulfill her dream of becoming a nurse. She contends that she needs the applicant to support her financially and to be available to watch their children while she is in class.

The applicant's spouse further asserts that in Sikh culture, a husband and wife should stay together, no matter what happens and that without the applicant, she would not have the same respect in her community.

As previously discussed, the record offers proof that the applicant's spouse is currently suffering from an undiagnosed but recurring medical condition in which she loses consciousness. The AAO finds that the incapacitating nature of the applicant's spouse's condition significantly limits her ability to care for her children or to function independently. Accordingly, when this hardship factor and the normal disruptions and difficulties created by the separation of a family are considered in the aggregate, the applicant has established that his spouse would experience extreme hardship if she remains in the United States without him.

As the record establishes that the applicant's spouse will suffer extreme hardship as a result of his inadmissibility, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion under the Act.

In 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).

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-Morales, 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 attempt to enter the United States using a photo-substituted passport and fraudulent visa in 1991; his failure to comply with an immigration

judge's 1992 removal order; his conviction for driving under the influence in 2003 and his periods of unauthorized employment. The mitigating factors in the present case are the applicant's U.S. citizen spouse and children; the extreme hardship that his spouse would experience if the waiver application is denied; his payment of taxes; his youth at the time he attempted to enter the United States unlawfully; the absence of a criminal record other than the conviction already noted; his participation in and support of the activities of the [REDACTED], the [REDACTED] of Indiana, as evidenced by a July 27, 2010 letter from that organization's president; and the positive role he plays in the life of his family, as indicated in the statements from his spouse's family members.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings 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.

ORDER: The appeal will be sustained.