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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
and Immigration
Services**



H5

DATE: **APR 20 2012** Office: SAN FRANCISCO, CA

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 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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of India who used false documents to enter the United States in 1989. 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). She 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 10, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director erred in denying the applicant's waiver, made certain factual errors and used boilerplate language to deny the appeal. *Form I-290B*, received August 11, 2009.

The record contains, but is not limited to, the following evidence: statements and briefs from counsel; statements from the applicant; statements from friends and family members of the applicant and her spouse; statements from the applicant's spouse; country conditions materials on India; statements from [REDACTED] Kaiser Permanente, concerning the medical conditions of the applicant and her spouse; psychological evaluation by [REDACTED] pertaining to the applicant's spouse; background documentation on medical conditions pertaining to the applicant's spouse; tax returns and other financial records pertaining to the applicant, her spouse and their income; photographs of the applicant, her spouse and their family.

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

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 was found inadmissible after the applicant admitted that she had entered the United States with false documents. The applicant stated in an interview with U.S. Citizenship and Immigration Services (USCIS) on March 3, 2009, that she entered the United States by riding in the back seat of a car while an agent presented paperwork at the U.S. border. Counsel now asserts that since the applicant was not asked any questions and was ignorant of the details concerning the documents presented by the agent, she could not have willfully misrepresented herself. Based on this counsel asserts that the applicant is not inadmissible under section

212(a)(6)(C) of the Act. If a misrepresentation is made by an applicant's attorney or agent, the applicant will be responsible for this misrepresentation if the applicant was aware of the action taken by the representative. This includes oral misrepresentations made at the border upon entry by an aider of the alien's illegal entry. *See* USCIS Memorandum, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators*, from Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 3, 2009. The record, including the applicant's own statements, reflects that the applicant was aware of the action taken by the agent at the border, though she may not have been aware of what specific documents were presented by the agent. Therefore the AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 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).

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.

Counsel asserts on appeal that the Field Office Director ignored evidence of emotional hardship, mischaracterized evidence from the applicant's spouse's primary care physician and failed to consider the hardship factors in the aggregate. *Brief in Support of Appeal*, received September 11, 2009. With regard to hardship upon relocation, counsel asserts that the applicant's spouse suffers

from several medical conditions which would create hardship for him upon relocation to India. In addition, counsel asserts, the applicant's spouse would have to abandon his successful business, in operation for 18 years, in order to relocate to India. She asserts that the applicant's spouse would be unable to find a job due to his age and would be unable to support himself or the applicant. Counsel further states that the applicant's spouse does not have significant family ties in India, and would not receive the same quality of medical care that he would in the United States.

The record contains country conditions materials on India, as well as documentation of the applicant's spouse's medical conditions, documentation establishing his ownership of a heating and air conditioning business. The applicant's spouse is currently 62.

While the country conditions materials submitted are not sufficient to establish that the applicant's spouse would be unable to find employment, the AAO does take note of the applicant's spouse's age, 62, and the fact that he has run his own business in the United States for the last 20 years. Based on the applicant's spouse's age, his stable employment and evidence documenting these facts, the AAO concludes that the applicant's spouse would experience an uncommon financial impact upon relocation.

The record contains a statement from [REDACTED]. She explains that she has been treating the applicant's spouse for Prediabetes, high blood pressure, Severe Cervical Vertebral Spine Arthritis, Chronic Gastritis, Chronic gastroesophageal reflux disorder and chronic irritable bowel syndrome. She notes that he suffers from chronic neck and back pain, inhibiting his physical activities, was hospitalized in 2005 due to anemia caused by his gastrointestinal problems and that he requires medication, diet and stress management to control his high blood pressure and stomach problems. The AAO finds this evidence probative, and can determine based on [REDACTED] statement that the applicant's spouse has several chronic medical conditions. The relationship the applicant's spouse has with his primary care doctor and other care provider's is a significant tie to the United States, and having to disrupt the continuity of the care for his medical conditions would be an uncommon medical hardship.

The record also contains tax documents and financial records, as well as photographic evidence, of the applicant's spouse's heating and air conditioning business. The applicant's spouse has worked at this business for 20 years, and in 2007 the company recorded a gross income of [REDACTED]. The applicant's own income was listed as [REDACTED] for that year. The business of the applicant's spouse constitutes financial tie and the source of family income, having to abandon this business in order to relocate would be an uncommon financial impact.

When the hardship factors established upon relocation are considered in the aggregate, they establish that the applicant's spouse would experience extreme hardship upon relocation.

With regard to hardship upon separation, counsel for the applicant asserts that the applicant's spouse would experience emotional, physical and medical hardship if the applicant were removed. *Brief in Support of Appeal*, received September 11, 2009. Counsel asserts that the applicant's presence is

necessary to care for her spouse, and refers to the statement by [REDACTED]. She also asserts that the applicant's spouse would experience emotional hardship due to their long marital history and refers to the psychological evaluation by [REDACTED]. Counsel also asserts that the applicant plays a significant role in her spouse's business.

As noted above, the record contains sufficient documentation to establish that the applicant's spouse has several chronic medical conditions. The statement from [REDACTED] notes that the applicant's spouse provides necessary assistance to her spouse by helping him maintain his diet, make his medical appointments and providing emotional support.

While the record contains evidence that the applicant's spouse owns and operates his own business, there is insufficient evidence to establish that it is dependent on the applicant, or that the business would not be able to hire another employee to assume her duties. In addition, based on his income from the business, the record does not indicate that the applicant's spouse will experience any uncommon financial impact upon separation.

The record contains a psychological evaluation from [REDACTED]. In her evaluation she repeats the applicant's spouse's background and concludes that he will experience "extreme psychological damage" if he was forced to give up the security and comfort that the applicant provides to him. While the AAO finds the submission of expert testimony useful, in this case the statement by [REDACTED] does not diagnose the applicant's spouse with any current mental health condition. While the AAO can accept that the applicant's spouse would experience some emotional hardship due to separation, based on the evaluation that has been submitted it cannot conclude that the emotional impact on the applicant's spouse would be distinct from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

The record establishes that the applicant's spouse will experience some medical hardship if the applicant were removed. When the totality of the circumstances are evaluated, however, it is not clear that any physical or medical hardship the applicant's spouse might experience would rise to the degree of extreme hardship. The AAO notes that the applicant's spouse is still employed and that his conditions are controlled by medications. There is no evidence that the applicant's spouse would be unable to meet his financial obligations, or that the applicant's spouse would be unable to afford professional help to assist him with any caretaking. As such, even when considered in the aggregate, the hardships upon separation do not rise to the level of extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme

hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case. 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.

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. *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.

ORDER: The appeal is dismissed.