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



H3

[REDACTED]
DATE: **AUG 29 2012**

OFFICE: ST. PAUL, MINNESOTA [REDACTED]

IN RE: [REDACTED]

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:
[REDACTED]

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, St. Paul, Minnesota and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated December 4, 2009.

On appeal, counsel asserts in pertinent part, that the applicant's U.S. citizen spouse will suffer extreme hardship if the waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received December 22, 2009.

The record contains, but is not limited to: Form I-290B, counsel's appeal brief and earlier letter in support of waiver; joint affidavit by the applicant and the applicant's spouse addressing inconsistencies raised by the field office director; various immigration applications and petitions; a hardship affidavit; family member affidavits; documents related to visits between the applicant's spouse and his parents; birth and marriage records and family photos; India country conditions reports; documents related to the applicant's business; the applicant's nonimmigrant visa application, inadmissibility record, and record of removal proceedings. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

The record shows that on December 7, 2005 the applicant was granted a nonimmigrant B-2 visa after indicating on the application that she was married to [REDACTED] and that the purpose of her visit was to attend a cousin's wedding. The applicant told a consular officer in Panama City, Panama that her husband was living in India and would return to Panama at a later date. The record shows that on June 16, 2006, in Minneapolis, Minnesota, the applicant married [REDACTED] already a lawful permanent resident of the United States who naturalized on July 16, 2008. The applicant and her spouse were interviewed on March 13, 2009 in relation to the Forms I-130 and I-485 filed on August 19, 2008. The record shows that both the applicant and the applicant's spouse testified under oath during the interview that they met for the first time in

January 2006 at the latter's house in California. A Notice of Intent to Deny was issued on April 2, 2009 to which the applicant's spouse responded in an affidavit: "We were married in Panama City, Panama on November 18, 2004." Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 or his child can be considered only insofar as it results in hardship to a 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 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.

The record reflects that the applicant’s spouse is a 35-year-old native of India and citizen of the United States. He states that words cannot describe the devastation he would experience if the applicant is removed. The applicant’s spouse writes that he is very close to her emotionally and has no family members in Minnesota besides the applicant and their five-year-old son, [REDACTED]. He clarifies on appeal that he has “a lot” of family support in Minnesota, both from his parents and siblings who often visit from Texas and California as well as from other local [REDACTED] who provide “family” support in a spiritual, cultural and religious sense. The applicant’s spouse contends that it would be “emotionally straining” to be left alone with his son and it would sadden him to see his son confused by the departure of his mother to whom he is so attached.

The applicant's spouse maintains that the applicant's presence and support is essential to the success of their recent business undertaking as owners/operators of a 61-room hotel which also serves as the family's home. Counsel asserts on appeal that the applicant "runs the front desk, helps with the hotel operation and paperwork and, significantly, watches over the couple's son" while the applicant's spouse runs the venture and that the two must "devote around-the-clock attention to the business and heavily rely on each other to carry out the duties." The applicant's spouse states that he would be unable to afford childcare for his son in the applicant's absence as she serves not only as an essential partner in the day-to-day operation of their business but as the primary caregiver to their son. He adds that he fears he lacks the capacity to serve as single father and business manager simultaneously.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including those of an emotional, familial, and economic nature. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation-related hardship, the applicant's spouse states that he would experience severe emotional hardship if separated from his mother and father to whom he is very close. He explains that though his parents and a brother live in Texas, and his sister and her family in California, the family members frequently visit one another, speak often on the phone, and are very close. Supporting evidence has been submitted. He adds that while the applicant's family lives in India, his own family does not and he would lack their emotional support. The applicant's spouse maintains that he has developed strong personal and professional ties in the United States where he has worked his way up in the hotel industry since 2001, has been trained to run such businesses, and enjoys working with family and friends in this field. The evidence demonstrates that the applicant's spouse has made a substantial investment in his own hotel, and he explains it would be very difficult to abandon it for an unknown economic and employment future in India where unemployment is high and he has no family support.

The applicant's spouse asserts that India is a dangerous place for himself and his family and submits a number of country conditions printouts. While the documents show instances of crime and violence, it has not been demonstrated that the applicant's spouse and family would be at risk. The applicant's spouse speculates that he would not receive proper medical care in India and that his son would not receive "proper education." Concerning the former, the applicant's spouse reasons that while he is currently in good health, his mother has a number of hereditary health problems that could arise in his own life and cause severe medical problems. The record contains no supporting medical evidence. He indicates that his son was born six weeks early and required an emergency cesarean delivery. The applicant's spouse states he is sure that his wife would not have survived such a delivery in India.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country in which he has not resided for a number of years; separation from close family ties in the United States including his mother, father, brother and sister; close community ties to the United States; his lengthy employment history in the United States and the purchase and operation of a new business therein; employment and

economic concerns about India; as well as stated education, medical, and safety concerns. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to India to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See, e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family and community ties to the United States; attestations by others to her good moral character and essential presence in the community; and her payment of taxes, business ownership in the United States and apparent lack of a criminal record. The unfavorable factors include the applicant's significant immigration violations which include multiple misrepresentations concerning her marital status, the date and circumstances under which she met and married her spouse, and her intent to immigrate, as well as working in the United States without authorization.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.