

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

[Redacted]

H5

DATE: DEC 05 2012

OFFICE: NEWARK, NJ

FILE: [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:

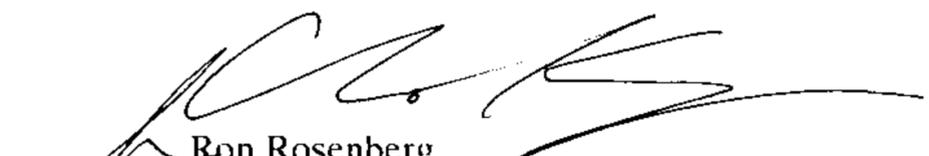
[Redacted]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who sought to procure admission into the United States by filing an asylum application using a false name and facts. He 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 admission to the United States through misrepresentation. The applicant is the son and husband of lawful permanent residents and is the derivative beneficiary of an approved Immigrant Petition for Alien Worker. 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 to reside with his lawful permanent resident wife and mother.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his lawful permanent resident wife and mother, the qualifying relatives, and denied the application accordingly. *Decision of Field Office Director*, dated August 31, 2011.

On appeal, counsel submits a brief, an affidavit from the applicant's wife, mother, and the applicant, medical records for the applicant's son and wife, tax and business records, academic and activity records for the applicant's son, a support letter from the local temple, and articles on country conditions in India. The record also includes, but is not limited to: hardship statements from the applicant's wife, mother and the applicant; support letters from several community members, longtime family friends and local organizations; other tax and business records; medical documents for the applicant's son; a forensic psychosocial evaluation of the applicant, his wife and son; additional academic and activity records for the applicant's son, and country condition articles. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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)(1) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien....

In the present case, the applicant admits to having sought to procure admission into the United States by filing an asylum application using a false name and facts. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud. The applicant's qualifying relatives for a waiver of this inadmissibility is his lawful permanent resident spouse and mother.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse and parent are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s qualifying relatives.

On appeal, counsel claims that the applicant’s mother will suffer extreme emotional and financial hardship upon separation from the applicant. The applicant’s mother states that the applicant provides her emotional support since the loss of her husband in 2007 and other help with her daily needs, including taking her to medical appointments and to worship at the temple. The applicant’s mother claims that while all of her children and grandchildren live in the United States, only the applicant is in a position to support her. The record contains no evidence that this support is unavailable from other family members. Regarding financial hardship upon separation, the applicant’s mother further states that the applicant provides financial support to her and that she has been living with the applicant since 2008. The record does not contain evidence of this financial support or the total expenses and income of the applicant’s mother demonstrating that separation from the applicant would cause her extreme financial hardship. The record contains tax records for the applicant’s family since 2008 and these records do not list the applicant’s mother

as a dependent. The applicant's mother states that the applicant pays her medical bills, but the record does not contain evidence of these payments. While emotional and financial difficulties are common results of inadmissibility, the record in this case does not establish that the applicant's mother would suffer extreme emotional and financial hardship in the event of separation from the applicant.

The record also does not establish that the applicant's mother would experience extreme hardship if she were to relocate to India with the applicant. The record shows that the applicant's mother is an Indian citizen who acquired her lawful permanent status in 2009. The applicant's mother states that she is suffering from the onset of osteoporosis. The applicant's wife states that medical care in India is not of the same quality as in the United States and the family will suffer medical hardship upon relocation to India. The record does not contain medical records for the applicant's mother documenting her condition, ongoing treatment and prognosis, or evidence regarding the unavailability of comparable medical care in India. Accordingly, the record does not support the applicant's claim that his mother will suffer medical hardship in the event of relocation.

The relevant evidence in the record, when considered in its totality, does not establish that the applicant's lawful permanent resident mother would suffer extreme hardship were the applicant unable to reside in the United States. Although the statements of the applicant, his mother and his wife are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.").

The record establishes that the applicant's spouse would experience extreme hardship if she were to relocate to India with the applicant. On appeal, counsel states that the applicant's wife will suffer emotional and financial hardship upon relocation to India. Regarding emotional hardship, the applicant's wife is very concerned about the medical condition of her acutely asthmatic son. The medical evidence shows that that the applicant's son has suffered from acute asthma since age four and his "health will be severely jeopardized if he...travel[s] to a third world country like India for an extended period of time...He could not handle the dust and extreme pollution that is pervasive in that country." *Letter from [REDACTED] dated September 19, 2011.* The applicant's wife and [REDACTED] both state that the applicant's son previously fell acutely ill while visiting India. Regarding financial hardship, the record includes the 2010 Human Rights Report for India published by the U.S. State Department which discusses the minimum wage in India and concludes that the minimum wage generally does not provide a decent standard of living for a worker and his family. Considered in the aggregate, the evidence establishes that the applicant's spouse would suffer extreme hardship in the event of relocation.

However, the record does not establish that the applicant's spouse would experience extreme hardship in the event of separation from the applicant. Counsel asserts that the applicant's spouse would suffer emotional and financial hardship upon separation. Regarding emotional hardship, the applicant's wife states that she relies on the applicant for emotional and mental support to help her make decisions and give her peace of mind. In 2007, the family underwent a forensic

psychosocial evaluation for immigration purposes and based on one interview, [REDACTED] diagnosed the applicant's wife with Adjustment Disorder with Mixed Anxiety and Depressed Mood due to this immigration case and her family's health and safety. *Forensic Psychosocial Evaluation* by [REDACTED] dated September 30, 2007. The record shows that after the denial of the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility on August 31, 2011, the applicant's wife began individual psychotherapy and medication management treatment at the Center of Revitalizing Psychiatry on September 20, 2011. *Letter from* [REDACTED] dated September 26, 2011. In September 2011, the applicant's wife filled three prescriptions for medication to treat anxiety and depression, but the record contains no other medical documentation regarding the applicant's wife's psychological health during the four-year period between the forensic psychosocial evaluation in September 2007 and the start of anxiety and depression treatment in September 2011 or thereafter. The present record is insufficient to show that separation from the applicant would negatively impact his wife's mental health to the extent that she would suffer extreme emotional or medical hardship.

Regarding financial hardship upon separation, counsel asserts that the applicant will be unable to sustain her financial obligations without the financial support of the applicant. The applicant's wife states that the monthly mortgage payments on the family home exceed her monthly net salary, but the record does not contain evidence of the family's total income and expenses. The applicant's wife states that the family once owned three different businesses. The tax records for 2010 indicate that the family lost over \$13,000 in business income, but the tax records for 2008 indicate that the family earned a gain of \$52,500 from the sale of one family business. The record does not document the total value of the remaining family businesses. The record does not contain sufficient evidence that the financial difficulties facing the applicant's wife rise to the level of extreme hardship in the event of separation from the applicant.

Although the applicant has established that his wife would suffer extreme hardship upon relocation to India, 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 relocation *and* the scenario of separation. 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 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 to his wife from separation, we cannot find that refusal of admission would result in extreme hardship to his wife.

Considered in the aggregate, the evidence does not demonstrate that the hardships suffered in this case have risen beyond what is normally experienced by families dealing with removal or inadmissibility. Consequently, the applicant has failed to establish extreme hardship to his qualifying relatives as required for a waiver of his inadmissibility under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.