

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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

H5

DATE:

DEC 05 2012

Office: LOS ANGELES, CA

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, or a request for a fee waiver. 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, Los Angeles, California, and the matter 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 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 an immigration benefit through fraud or misrepresentation. The applicant is the son of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his lawful permanent resident parent and denied the application accordingly. *See Decision of the Field Office Director* dated August 24, 2010.

On appeal, the applicant, through counsel, claims that his waiver application was denied in error. *See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion*. In support of the appeal, the applicant submits declarations executed by his mother, sister-in-law, and brothers. Additionally, the appeal is accompanied by medical records relating to the applicant's mother and brother. Counsel indicates that a brief would be submitted within 30 days of filing the appeal, but after over two years, the AAO has not received any brief or additional evidence.

The record includes the above-mentioned documents submitted on appeal as well as the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, and the documents submitted in support of the waiver application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

Section 212(i) of the Act provides:

(1) The Attorney General [now Secretary of Homeland Security (the Secretary)] may, in the discretion of the [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 [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 record reflects that the applicant was found to be inadmissible because he sought admission to the United States in October 2000 with a passport bearing an assumed name. The applicant does not dispute this finding. The AAO thus finds that the applicant is inadmissible as charged under section 212(a)(6)C(i) of the Act.

The Act provides that a waiver of inadmissibility, under section 212(i) is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. 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).

The applicant's case is based on a claim of extreme hardship to [REDACTED] his lawful permanent resident mother. The record contains references to hardship that the applicant's brother [REDACTED] a U.S. citizen, would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's siblings as a factor to be considered in assessing extreme hardship. In the present case, the applicant's mother is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's brother will not be separately considered, except as it may affect the applicant's qualifying relative.

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 (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 in this case contains statements by the applicant’s mother, sister-in-law and five brothers. In their nearly identical statements, the applicant’s relatives maintain that denial of the applicant’s waiver application would result in hardship to the applicant’s mother due to her advanced age and medical conditions. The record on appeal contains a letter from a physician listing the applicant’s mother’s ailments, including hypertension, diabetes, hyperlipidemia, reflux and a benign brain tumor. The applicant had previously submitted his mother’s medical records which, as noted by the director, did not support the applicant’s claims regarding his mother’s medical condition and demonstrated that his siblings accompanied his mother to her medical appointments. The applicant’s mother, sister-in-law and brothers state that the applicant has been caring for his mother, especially after the passing of the applicant’s father in 2005. The evidence in the record does not support their claims. The applicant’s relatives state that one of the applicant’s brother’s would face hardship given his back problems and resulting dependence on the applicant’s assistance. As noted above, hardship to the applicant’s brother is not a factor that can be considered in this waiver determination.

The evidence in the record does not demonstrate that the applicant's mother would face extreme hardship because of either separation from the applicant, or relocation to India. There is no evidence that the applicant's mother depends on the applicant financially, or that he is her caregiver as claimed. The concerns and hardships noted in the applicant's relatives' declarations are common among individuals in the applicant's mother's circumstances and do not rise to the level of extreme hardship. The record includes evidence of the applicant's mother's frequent trips abroad, significant family ties in the United States, and reliance on her children for her care and companionship. The AAO therefore finds that the applicant cannot establish that his mother would face extreme hardship because of separation from the applicant. Likewise, the applicant cannot demonstrate that denial of his waiver application would result in extreme hardship upon relocation to India. In this regard, the AAO notes that the applicant's mother does not claim that she would relocate to India. Despite her advanced age, however, there is no evidence in the record to suggest that treatment for her common medical conditions is unavailable in India. 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. at 886. The applicant's mother is a native of India. 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, supra*; see also *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living [] and the difficulties of readjustment to that culture and environment . . . simply are not sufficient").

As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(i) 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.