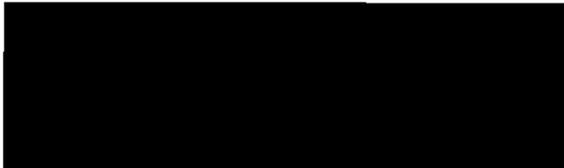




U.S. Citizenship
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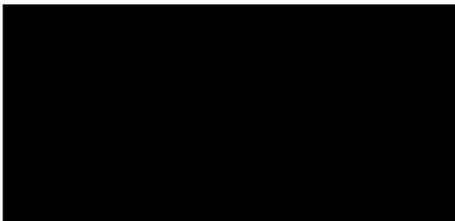


Date: **DEC 06 2012** Office: NEW DELHI, INDIA FILE:

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 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, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and 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 attempting to procure a U.S. immigration benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and is the father of a U.S. citizen child. He 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), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 20, 2010. The Field Office Director subsequently denied the applicant's motion to reopen and reconsider, finding the applicant presented no arguments that her initial denial was contrary to law, regulation, or policy, and that the applicant presented no new evidence. *Decision of the Field Office Director*, dated May 18, 2011.

On appeal, the applicant, through counsel, claims that the Field Office Director erred by concluding that the evidence did not establish the applicant's spouse is suffering extreme hardship. *Form I-290B, Notice of Appeal or Motion*, dated June 15, 2011. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and his wife, letters of support, medical and psychological documents for the applicant's wife and daughter, school documents for the applicant's daughter, photographs, and country-conditions documents on India. The entire record was reviewed and considered in arriving at a 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (1) 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 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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. The applicant's wife 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 United States Citizenship and Immigration Services (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 (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 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 child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative 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 spouse.

In the present case, the record indicates that the applicant’s wife filed a Form I-130 on behalf of the applicant that was approved on June 4, 2002 and was supported by a State of Nevada marriage certificate claiming that the applicant and his wife married in Nevada on [REDACTED] 1997. Additionally, in the applicant’s signed Biographic Information (Form G-325A) dated January 10, 1998, he claimed that he resided in California since November 1997. During his visa interview on February 12, 2003, the applicant claimed he entered the United States on November 15, 1997 by presenting a fraudulent passport. After becoming a U.S. citizen, the applicant’s wife filed a second Form I-130 on his behalf, which was approved on April 10, 2006. In the second Form I-130, the applicant claimed that he married his wife on [REDACTED] 1997 in India. During his visa interview on May 23, 2007, the applicant admitted that he had provided false testimony during his interview in 2003 and had never been to the United States.

In his appeal brief dated July 15, 2011, counsel claims that the applicant’s misrepresentations were the result of “misguidance by their previous attorney.” However, the applicant takes “full responsibility

for his past wrongdoing.” Moreover, in her statement dated February 19, 2010, the applicant’s wife states the applicant’s statement in 2003 was “a complete lie” and they “want to come clean.” Since the applicant does not dispute that he misrepresented material facts in an attempt to procure an immigration benefit, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Concerning the hardship the applicant’s wife would experience if she were to relocate, in her statement dated February 23, 2009, the applicant’s wife states she has no family or friends in India, and all of her immediate family resides in the United States. In his statement dated February 5, 2009, the applicant’s father-in-law states they have some distant family members in India. Evidence in the record corroborates claims that the applicant’s wife’s immediate family resides in the United States. The applicant’s wife claims that she will have “problems adjusting to life” in India. Counsel states the political and security situation in India is “not very impressive,” and jobs are difficult to find.

The applicant’s wife states their daughter would suffer if they relocate to India, because she has adapted to life in the United States, she would be deprived of an American education, and she would have difficulty adjusting to the climate and lifestyle in India. She claims that their daughter gets sick in India because of the pollution. Medical documentation in the record establishes that the applicant’s daughter suffered allergic bronchitis and diarrhea when she was in India between June 1, 2007 and February 28, 2008. Additionally, counsel claims that the applicant’s daughter is very close with her maternal grandparents who visit often, and with the family members whose home they share.

The AAO acknowledges that the applicant’s wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, she is a native of India, and it has not been established that she does not speak the language or is unfamiliar with the culture and customs of India. Additionally, the record does not contain documentary evidence showing that the applicant’s wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regarding the medical hardships to the applicant’s daughter, no documentary evidence was submitted establishing that she cannot receive adequate medical treatment in India or that she has to remain in the United States for medical care. Additionally, the applicant’s daughter is not a qualifying relative under the Act, and the applicant has not shown that hardship to his daughter would elevate his wife’s challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to India.

Regarding the hardship caused by their separation, the applicant’s wife states she has been separated from the applicant for over 12 years, she does not know how much longer she can remain separated from him, and the separation has caused her “tremendous mental problems.” In his statement dated April 13, 2009, the applicant claims that his wife is severely depressed and on the verge of a “mental breakdown.” The applicant’s wife states she is “sleep deprived, emotionally unstable and stressed

out”; she visited a psychiatrist once but cannot afford more sessions, because she has no medical insurance and her “budget is tight.” Medical documentation in the record establishes that the applicant’s wife is suffering anxiety, depression, and tension headaches. Additionally, in a psychosocial evaluation dated October 1, 2008, licensed professional counselor [REDACTED] concludes the applicant’s wife’s “depressive symptoms” interfere with her daily activities. The applicant’s wife also fears that the applicant will divorce her because of the length of their separation. In her statement to [REDACTED] the applicant’s wife’s cousin, who is married to the applicant’s brother, claims that the applicant is considering divorcing his wife, and this is “causing and escalating family conflicts.” Additionally, the applicant claims that his wife is “very concerned and traumatized” because of their daughter’s separation from him.

The applicant’s wife states she wants to give their daughter a good life, which is possible only if the applicant is allowed to immigrate to the United States. She states it is financially and emotionally difficult being a single parent, and their daughter will suffer mentally if she is not reunited with the applicant. Additionally, [REDACTED] reports that the applicant’s daughter is “whining and having problems acclimating to class work.”

The applicant’s wife claims that she works as a housekeeper earning approximately \$20,000 a year. The applicant claims that it is difficult, but he tries to financially support his family from India. The applicant’s wife states it is expensive to travel to India. The applicant is concerned that his wife may lose her job because of the time she takes to visit him. Additionally, the applicant’s wife states they reside with the applicant’s brother, who is married to her cousin, and she feels that they are burden on the family.

The AAO acknowledges that the applicant’s wife is experiencing emotional and financial hardship due to her separation from the applicant. The AAO finds that when the applicant’s wife’s emotional and financial issues are considered in combination with the hardships that usually result from separation of a spouse, the applicant has established that his wife would experience extreme hardship in the United States in his absence.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.