

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

[REDACTED]

115

Date: DEC 20 2012

Office: CINCINNATI

FILE: [REDACTED]

IN RE: Applicant: [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,

f-

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Cincinnati, Ohio. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The record establishes that the applicant is a native and citizen of India who 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 having attempted to procure a nonimmigrant visa 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 his U.S. citizen spouse.

The Field Office Director concluded the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 27, 2009.

On appeal, the AAO determined the applicant had not shown that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resided abroad due to his inadmissibility nor had he established that his spouse would experience extreme hardship should she relocate to India to reside with him. Thus the appeal was dismissed. *Decision of the AAO*, dated December 6, 2010.

On motion, counsel for the applicant submits a brief; curriculum vitae for the professional submitting a previous psychological evaluation of the applicant's spouse; a second psychological evaluation of the applicant's spouse; country condition information on India; a letter from the applicant's employer; and a declaration from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (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.

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. *Salcido-Salcido v. INS*, 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.

As noted above, the AAO found that extreme hardship had not been established were the applicant's spouse to remain in the United States while the applicant resided abroad due to his inadmissibility or should she relocate to India to reside with the applicant. The AAO determined that a letter from a psychiatrist contained information concerning the lives and responsibilities of the applicant and his spouse, but offered little insight or analysis of the spouse's mental state and that the conclusions were based on history given him during one interview, thus diminishing the value. The AAO also found no evidence had been submitted to demonstrate the applicant's role in operating his business or to establish the applicant's spouse or business partners would be unable to operate without him or obtain additional personnel to help. The AAO further determined that no documentary evidence had been submitted to support the applicant's claim that a return to India would result in hardship for his family and that the record did not articulate what hardship the applicant's spouse and children would experience in India beyond claims that relocation would prevent the children from receiving a quality education unless placed in private schools, a claim also not supported with objective evidence.

On motion, counsel highlights the second psychiatric evaluation and its findings that the applicant's spouse has an anxiety disorder complicated by a fear of separation from those on whom she depends that would make separation from the applicant devastating. Counsel contends country condition information submitted on appeal supports a claim that the social, educational, and economic impact of relocation to India would be severe on the applicant's children, creating a hardship for the qualifying relative spouse, given her already "fragile state". Counsel asserts that, given the average wage and GDP per person of India, if the applicant returned alone he would not earn enough to assist in the support of his family in the United States, causing the applicant's spouse to support two households. Finally, counsel asserts that the letter from the co-owner of the applicant's business describes how the applicant is solely responsible for all aspects of running the business while the spouse would be unable to do so, an observation counsel claims is supported by the psychological evaluation.

In her declaration the applicant's spouse points out how supportive the applicant is of their children and that their dreams will be shattered by separation from the applicant. The spouse describes herself as mentally and physically weak with no friends or family to understand her situation. She calls the applicant the emotional, financial and spiritual foundation of the family.

The letter from the co-owner of a store managed by the applicant states that the applicant is responsible for ordering supplies, bookkeeping, personnel management, negotiating contracts, marketing, payroll and all funds, for which he works more than 60 hours per week. He further contends the store is successful because of the applicant, who has managed it since it opened more than 10 years ago, and that the applicant's spouse would be unable to take over the duties.

The second psychological evaluation cites interviews and various tests that determined the applicant's spouse is submissive and dependent on others while being tense, struggling with depression, and being overwhelmed at times by her anxious state. The evaluation notes she exhibits helplessness and experiences prolonged depressive moods. The report notes that the applicant's spouse stated she had decreased appetite, lost weight, and had crying spells several times a week. The evaluation concludes that the spouse experiences an anxiety disorder, is highly dependent on those she trusts, and that separation from those on whom she relies would be destabilizing.

The previously-submitted evaluation, based on an interview with the applicant's family, offered that the applicant's spouse suffered from an Adjustment Disorder with Depressed Mood due to risk that the applicant may return to India. This was causing a lessening in her capacity to function for herself, the businesses, and her children. The evaluation further noted the applicant's spouse said she was preoccupied thinking about the applicant's situation, thus making errors at work with the knowledge that she cannot function in a business environment without the applicant.

The AAO finds the applicant has established his spouse will suffer extreme hardship were she to be separated from the applicant due to his inadmissibility. Two psychiatric evaluations support that the applicant's spouse suffers depression and anxiety exacerbated by the prospect of separation from the applicant. They support, as does the letter from the owner of the business operated by the applicant, that the applicant's spouse would be unable to operate the businesses without the applicant or likely be able to hire a manager. The record has established that the applicant's spouse is emotionally and financially dependent on the applicant such that separation from him would cause her to experience extreme hardship.

The applicant also contends his spouse would suffer extreme hardship were she to relocate to India to reside with the applicant. Counsel asserts the applicant's children would face lessened educational opportunities that would create an emotional hardship for the applicant's spouse. Country information submitted by counsel provides general information about India, including education, health, and economic conditions. Counsel highlights reports of increases in private education due to a perceived lower quality of education in public schools. Counsel further contends, and the submitted information references, that much of health care in India is paid by personal funds rather than through health care insurance.

The record contains evidence establishing that the applicant's children, natives and citizens of the United States, are integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to India would constitute extreme hardship to them, and by extension, to the applicant's spouse, as evidenced by the psychiatric evaluations of her noted above. Alternatively, were they to remain in the United States the applicant's spouse would experience hardship due to long-term separation from her children.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to reside in India, the applicant's community involvement, his gainful employment and business ownership, his payment of taxes, letter of support from a business associate, and apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's fraud or willful misrepresentation.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291

of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, the motion will be granted and the underlying I-601 waiver application approved.

ORDER: The motion is granted and the waiver application is approved.