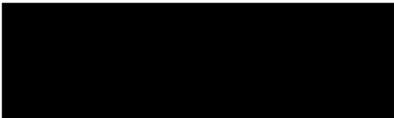


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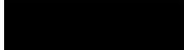
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



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DATE: JUL 23 2012

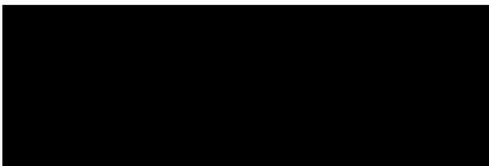
Office: SAN JOSE

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the 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,

for

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Jose, California, 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 was detained attempting to enter the United States under a false name using a fraudulent passport bearing a U.S. visa on or about March 17, 1994. On June 13, 1994, an Immigration Judge ordered him excluded and deported to India and he was removed from the country on November 16, 1994. On or about March 13, 1995, the applicant procured admission to the United States under a second alias and using another fraudulent passport bearing a B1/B2 visa. The applicant is the beneficiary of an approved spousal Petition for Alien Relative (Form I-130). Based on the applicant having procured admission to the United States with fraudulent documents and being previously deported USCIS found him to be inadmissible to the United States under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with his U.S. citizen wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Excludability (Form I-601). *Decisions of Field Office Director*, July 20, 2010.<sup>1</sup>

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's wife will suffer as a result of the applicant's inadmissibility and in not considering hardship in the aggregate. In support of the appeal, counsel submits a brief and documentation including, but not limited to: hardship statements; employment and support letters; medical records; a psychological evaluation letter; tax records and financial information, including a mortgage, bank statements, and utility bills; and photographs. The record also contains documentation submitted in support of the original waiver request and application for adjustment of status, including: birth, marriage, and naturalization certificates; certificates of title; and tax returns, W-2 statements, and pay stubs. The entire record was reviewed and considered in rendering this decision.

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

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:

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<sup>1</sup> On August 20, 2010, the applicant filed an appeal of the decision of the field office director. However, as counsel submitted a single Form I-290B for separate decisions denying the Form I-601, Form I-212, and Form I-485, USCIS required counsel to designate to which decision the August 20, 2010 filing pertained. By letter dated September 2, 2010 counsel indicated the initial filing should be seen as pertaining to the Form I-601.

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 [...].

A waiver of inadmissibility under section 212(i)(1) 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. The only qualifying relative in this case is the applicant's U.S. citizen spouse. 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant contends that the applicant’s wife will suffer emotional and financial hardship if her husband is unable to reside in the United States. The record shows that the applicant’s wife sought and obtained a psychological evaluation letter one month after her husband’s waiver application was denied. The psychiatrist offered a clinical impression of depressive disorder, based on the qualifying relative’s report of symptoms including sadness, anxiety, poor focus, and insomnia, but noted not having conducted a forensic examination. The letter observed that “[she] seemed to be more interested in just receiving the letter documenting her distress rather than treatment recommendations.” *Psychological Evaluation*, August 17, 2010. There is no evidence that she pursued either the counseling or medications recommended by her doctor to help her cope with her symptoms. The applicant’s wife claims that her emotional state is causing difficulties at work, but the record contains no indication of performance issues. Although the record contains no claims by the qualifying relative of significant medical issues beyond the depression noted above, she reports being worried that her husband’s removal will deprive her diabetic mother of his care and assistance. There is no evidence that the applicant has any special qualifications to render such aid, only that he accompanies her to health classes and medical appointments, as needed. The AAO also notes the qualifying relative’s claimed close relationship to her three siblings offers her both a potential source of emotional support and possible assistance in caring for the mother currently living with her, and the record reflects at least one sibling offering to help out.

Regarding the financial hardship caused by separation, although the applicant’s wife contends her husband’s departure will hurt the family economy, there is no evidence he contributes earned income to the household. The record substantiates that his wife is the family breadwinner and shows that he donates his skilled labor to church construction projects, but does not reflect him being paid

regularly for his efforts.<sup>2</sup> The qualifying relative claims that, while she is at work, the applicant watches their four children, ages seven through 15, and thereby spares the family childcare expenses. The record reflects, however, that her mother resides with them and does not explain why she is unable to watch over her grandchildren while their mother is at work. The qualifying relative says that departure of her husband will place in jeopardy the home purchase they made in July 2010. The AAO notes she fails to establish that her husband's departure will render her unable to make mortgage payments, as the record does not show her income insufficient to pay household expenses and meet other obligations, such as possible childcare costs.

There is no indication what contribution the qualifying relative's mother is able to make to help maintain the household in which she lives with her daughter's family. Nor has it been established that the applicant will be unable to support himself outside the United States and therefore require financial support from his wife. Due to high travel costs to India, the applicant's wife claims visiting her husband is not a feasible option for easing the pain of separation. The record, however, shows she has visited India with her children at least twice since emigrating in 1994.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. Based on the evidence provided, the applicant has not met his burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if he is unable to remain here.

Counsel contends that the qualifying relative would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, she reports that her parents and three siblings are all naturalized U.S. citizens residing in the United States. There is evidence that the applicant's wife's entire support network is in the United States and that, besides herself enduring a difficult childhood in India, the country would be completely foreign to her four children. The record suggests that the departure from India of the qualifying relative's father when she was a child left her, her mother, and her siblings in the care of an abusive uncle and that, as a result, she has maintained no ties to her home country since emigrating 18 years ago with her family. She contends that her job prospects are nonexistent, both because she has only a high school education and because cultural barriers would limit her options for working outside the home. Leaving her adopted country would, she claims, force her to sell her house (for inability to pay the mortgage), forfeit the family's medical insurance (that comes with her job), and return to a land where her caste origins will relegate her to a life of poverty. Finally, she expresses fear that returning her children to the area where she was born will place them under the influence of the uncle who abused her as a child.

The applicant's wife also worries about her children's health and safety: they all became ill during prior visits and, as U.S. citizens she fears they are at risk of terrorism, kidnapping, and religious violence. The U.S. government confirms the validity of these concerns, generally, and also notes that the Punjab region on the India-Pakistan border is among those areas subject to instability and

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<sup>2</sup> It appears contractors hire him as needed for specific projects, but the record does not show his earnings for such work.

adequate medical care is limited or unavailable in rural areas. *See India—Country Specific Information*, U.S. Department of State (DOS), April 3, 2012.

As documentation supports these claims, the record reflects that the cumulative effect of the applicant's wife's ties to the United States and absence of ties elsewhere, her U.S. residence and naturalization in the United States, and concern for the health and safety of her family, were she to relocate, rises to the level of extreme. Although mere diminution in earnings or the inconvenience of needing to pursue new employment does not constitute hardship that rises to the level of "extreme," documentation establishes that the applicant's wife would likely have difficulty procuring employment, which would interfere with her ability to continue supporting the family. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she to relocate abroad.

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 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 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*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, 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, 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.