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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

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H5

DATE: MAR 13 2012 OFFICE: LOS ANGELES, CA

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.

Thank you,

Perry Rhee
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who has resided in the United States since March 18, 1990, when he attempted to gain admission using a passport which did not belong to him. 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. 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 that there was insufficient evidence of extreme hardship to a qualifying relative, and that the applicant did not merit a favorable exercise of discretion. *See Decision of Field Office Director*, dated February 22, 2008. The Field Office Director denied the application accordingly. *Id.*

On appeal, counsel for the applicant submits the applicant's spouse, a U.S. Citizen by birth, would experience extreme hardship given her history of psychological difficulties and substance abuse, and her consequent dependence on the applicant. Counsel also contends the applicant's spouse has undergone numerous expensive fertility treatments in hopes of starting a family with the applicant. Counsel indicates that without the applicant, the spouse would not have health insurance, nor would she be able to meet her financial obligations. Counsel concludes that the applicant does merit a favorable exercise of discretion despite the Field Office Director's finding to the contrary.

The record includes, but is not limited to, statements from the applicant and his spouse, letters from family, friends, and employers, medical records and bills, financial documents, records of criminal proceedings, evidence of property ownership and business interests, evidence of birth, marriage, residence, and naturalization, other applications and petitions filed on behalf of the applicant, evidence of involvement in the community, educational documents, articles on country conditions in India, and documents related to immigration proceedings. 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 [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 on March 18, 1990, the applicant attempted to procure admission into the United States using a fraudulent page-substituted passport in the name of [REDACTED]. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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 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 applicant’s spouse discusses her psychological and emotional background, describing emotional abuse by her mother, a history of alcohol abuse which culminated in four convictions for driving under the influence, a time period when she received disability benefits due to her psychological conditions and their psychosomatic effects, and abusive relationships with men. Documentation of the alcohol abuse, treatment, driving under the influence convictions, and disability benefits are present in the file. The applicant’s spouse indicates that she met the applicant in 2002, and since then the applicant has helped her turn her life around. She explains that the applicant has helped her achieve and maintain sobriety, as well as her career goals of obtaining her real estate license. The applicant’s spouse adds that without the spouse, she would almost certainly revert to her self-destructive tendencies. A psychological evaluation confirms that the applicant’s spouse has been diagnosed with an adjustment disorder with mixed anxiety and depressed mood, stressing that given her psychological history and substance abuse and her consequent dependence on the applicant she may require inpatient hospitalization and rehabilitation for depression and alcohol abuse upon separation from the applicant.

The applicant's spouse adds that without the applicant, she will be unable to conceive a child, which will further add to her emotional difficulties. The record contains documentation of fertility treatments which have cost her over \$30,000. The spouse explains she would be devastated if her dream of having children was destroyed. Furthermore, the spouse indicates that she has health insurance through the applicant, and would be unable to afford such treatments or other medical and psychological care without that insurance. The applicant's spouse adds that she would experience significant financial difficulties without the applicant's income, given that she has to make mortgage payments on multiple investment properties as well as her own residence. Evidence of home ownership, property management, and mortgage payments are submitted in support of these assertions.

The applicant indicates his spouse would experience great hardship if she relocated to India, given that she has no ties to India, only to the United States, she does not speak any Indian languages, and her real estate skills and license would not help her in India. Furthermore, the applicant states that his spouse would have to give up on her business in the United States, and that as a foreigner and a woman she may be mistreated or even harmed.

The applicant's spouse's contention that she would experience financial hardship is not supported by the record. The spouse's Form I-864, Affidavit of Support, indicates that she earns \$200,000 a year, and there is no indication in the record that her expenses exceed that income. Counsel asserts that her income as a part-time bookkeeper is \$30,000 a year, adding that she depends on the applicant's income to make monthly mortgage payments for her multiple properties; however, counsel fails to discuss how income earned from these investment properties affects the analysis on financial hardship. The applicant further fails to provide any evidence regarding his current earnings, although there is evidence of his employment in the record. Without full details and supporting evidence of the family's expenses and income, especially taken in light of the spouse's income as reported on the Form I-864, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face upon separation from the applicant.

The applicant's spouse has shown emotional and psychological hardship given her unique family and life history. The record supports assertions that she has had issues with alcohol abuse, and as a result she has four convictions for driving under the influence. The record also shows that she has received disability benefits as a result of her psychological and emotional difficulties, and that she has a history of medical and psychological treatment. Moreover, the applicant has submitted evidence related to multiple rounds of fertility treatments, which support the spouse's assertion on her desire to have children, and her consequent emotional distress due to her miscarriage. The timeline with respect to her psychological issues and her relationship with the applicant does show that the applicant has had a positive impact on his spouse.

Given the spouse's history of psychological and emotional difficulties, substance abuse, as well as her well-documented efforts with respect to having a child, the AAO finds that her hardship, viewed in the aggregate, would rise above the distress normally created when families are separated as a result of inadmissibility or removal. Therefore, the applicant has shown his spouse would experience extreme hardship upon separation from the applicant.

The applicant has also demonstrated that his spouse would experience extreme hardship upon relocation to India. The record reflects spouse was born in the United States, and has no family or business ties in India. Furthermore, the applicant's spouse does not know any Indian languages, and consequently may have difficulties adjusting to life in India as well as obtaining employment. When these difficulties are viewed cumulatively, the record establishes that the applicant's spouse would experience extreme hardship if she relocated to India with the applicant.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The unfavorable factors include the applicant's misrepresentation at entry, periods of unauthorized presence and employment, his admitted filing of a fraudulent legalization application, and a failure to appear at a deportation appointment in 1994. The favorable factors include the showing of extreme hardship to his U.S. Citizen spouse, evidence of good moral character as stated in letters from friends, family, and employers, his residence of long duration in the United States, the existence of property and business ties in the United States, a history of paying taxes and evidence of community involvement.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.