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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**

H5

Date: **MAR 26 2012** Office: CHICAGO, ILLINOIS 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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Khew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the mother of a United States citizen child and two Indian citizen children. Her husband is the beneficiary of an approved Petition for Alien Worker (Form I-140). 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 her spouse and children.

The Field Office Director found that the applicant had 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 September 17, 2009.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) abused its discretion in denying the applicant's waiver application. *See Form I-290B*, filed October 15, 2009. Counsel claims that the applicant's spouse will suffer extreme hardship if the applicant is removed to India. *See id.*

The record includes, but is not limited to, counsel's appeal brief, counsel's brief in support of the I-601, letters of support for the applicant and her husband, psychological evaluations of the applicant's husband and United States citizen son, and financial documents. 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) In general.-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, 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 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 indicates that in 1998, the applicant entered the United States by presenting a passport in someone else's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not dispute this finding.

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. 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-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 children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children 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 counsel's undated appeal brief, counsel states that the applicant's husband has extensive family ties to the United States, he has no family in India, he is gainfully employed in the United States, and he has no social networks in India. Counsel claims that the applicant's husband's knowledge of written Hindi is poor, but he does speak Hindi. Additionally, counsel claims that the applicant's husband will be unable to secure employment in India that would provide the same income as his job in the United States. Other than counsel's statement, there is no documentary evidence supporting counsel's claims. 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)).

Counsel states that terrorist attacks have increased in India, and the applicant's spouse and children will face danger, and possibly even death, if they return to India. The AAO notes that the Department of State's New Delhi Consular District issued an emergency message on February 13, 2012, regarding an attack on an Israeli diplomatic vehicle. The message advises United States citizens to "maintain a high level of vigilance, remain aware of their surroundings, monitor local news reports, avoid crowded places, and take appropriate steps to bolster their personal security." The AAO notes the security concerns in New Delhi, India; however, the applicant and her husband are from Gandhinagar, India, and no evidence has been submitted establishing that there are security concerns in Gandhinagar.

The AAO acknowledges that the applicant's husband is a lawful permanent resident of the United States and that he has resided in the United States for many years. However, the AAO observes that the

applicant's husband is a native and citizen of India familiar with the culture and language there. Additionally, the record does not contain documentary evidence showing that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. 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 her husband would suffer extreme hardship if he returned to India.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. Counsel claims that the applicant's husband is suffering from depression and anxiety, and is having severe panic attacks. In a psychological evaluation dated June 12, 2007, [REDACTED] diagnosed the applicant's husband with depression. [REDACTED] reports that the applicant's husband's situation "has significantly affected his personality, mood, and social functioning." Counsel claims that the applicant's children are also suffering psychological problems. In counsel's undated brief in support of the I-601, counsel states the applicant's youngest son is very attached to the applicant. In a psychological evaluation dated June 12, 2007, [REDACTED] reports that the "current situation is quite stressful for [the applicant's son]." The AAO acknowledges that the applicant's son may suffer some hardship in being separated from the applicant; however, the applicant's son is not a qualifying relative. Additionally, the AAO notes that other than counsel's statement that the psychological problems suffered by the applicant's children are exacerbating the health conditions of the applicant's husband, the applicant has not shown through documentary evidence that hardship to her children has elevated her husband's challenges to an extreme level.

Counsel states the applicant's husband is the main financial provider for the household but the applicant also contributes financially and takes care of their children. Counsel also states the applicant's husband and children depend on the applicant for their daily needs and support. Counsel claims that if the applicant returns to India, the applicant's husband would have to raise their children alone. Additionally, counsel claims that the applicant's husband will have to support two households, one in India and one in the United States, which will be nearly impossible on his income.

The AAO acknowledges that the applicant's husband may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and her husband's income; however, this material offers insufficient proof that the applicant's husband will be unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has submitted no evidence to establish that she would be unable to obtain employment in India and, thereby, financially assist her husband from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.