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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090



U.S. Citizenship
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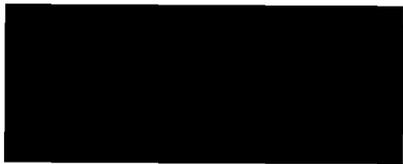
DATE: **MAR 30 2012** OFFICE: CALIFORNIA SERVICE CENTER

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 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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 has resided in the United States since June 4, 1998, when he was admitted pursuant to a nonimmigrant visa. The applicant had previously presented a permanent resident card which was not his own in an attempt to gain admission to the United States. 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 lawful permanent resident and is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his U.S. Citizen daughter. 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 lawful permanent resident spouse.

The Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Director* dated October 16, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal as well as a psychological evaluation. In the brief, counsel asserts that the applicant's spouse experiences psychological, financial, medical and other hardship which would be exacerbated in the event of separation from the applicant and in the event of relocation to India.

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, evidence of birth, marriage, residence, and citizenship, medical records, financial documents, evidence of immigration proceedings, and other applications and petitions filed on behalf of the applicant. 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 in 1996 the applicant presented a lawful permanent resident card which did not belong to him to gain admission into the United States. The applicant does not contest inadmissibility on appeal. He 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 lawful permanent resident 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 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 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.

The applicant’s spouse, now 64 years old, explains in a statement that she and the applicant have been married for more than 36 years, that they have never been apart, and that she completely depends on him for moral, physical, emotional and financial support. She contends that she has serious medical issues, including trouble with her cataracts, a thyroid problem, dental problems, and she had a tumor removed in February 2009. Because of these medical conditions, the spouse states that despite being on an extensive medication program, she still does not feel well at times, she has dizzy spells, and is prevented from finding employment. Medical records are submitted in support of these assertions.

Moreover, the applicant’s spouse asserts that because she is unable to work the applicant and her family has been providing financial support. A psychological evaluation indicates that the applicant works at a motel and earns money for the household. The evaluation adds that the applicant also does all the cleaning, food shopping, and cooking due to the spouse’s physical and mental problems. The evaluation states that the applicant assisted the spouse during the

evaluation, because the spouse does not know English and only knows Gujarat, which is an Indian dialect. The evaluation also describes the spouse's time in India living with their only son as very traumatic for the spouse, because the son would drink alcohol to excess and physically abuse the spouse. The evaluator indicates the spouse is therefore physically, psychologically, and socially extremely dependent on the applicant exclusively, that she is in a psychological crisis, and that she has a clinical psychological diagnosis of pain disorder in addition to her chronic medical conditions.

Furthermore, in addition to the applicant's spouse's concern about returning to India and the abusive situation with her son due to the household's inability to afford living in an alternate residence, the spouse is concerned that in India she and the applicant, both over 60 years of age, will not be able to find employment. The spouse asserts that in the event of relocation she will leave behind a U.S. Citizen daughter, granddaughter, and brothers in the United States, in order to live with the applicant and her abusive son in India.

The record does not contain sufficient evidence of the spouse's and the applicant's household expenses to support assertions of financial hardship. Although the psychological evaluation indicates that the applicant is currently working at a motel, the applicant fails to provide any evidence regarding this employment and income. Without details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The psychologist opines that the applicant's spouse is physically, socially and psychologically dependent on the applicant, and that she has even transferred responsibility for household chores she previously performed, such as cleaning, shopping, and cooking, to the applicant. However, this evaluation contains many claims which are inconsistent with the spouse's own statements. For instance, the applicant's spouse states that she and the applicant had one child, [REDACTED] but the psychological evaluation contends that the couple also has a son, [REDACTED] who may or may not be the abusive son discussed in the evaluation. Additionally, the evaluation, dated December 9, 2009, indicates that the applicant and his spouse moved to [REDACTED] two years ago, but the applicant's spouse's statement contradicts this, claiming she and the applicant live with her daughter in Florida as of the date of the statement, September 16, 2009. Given these factual inconsistencies, the AAO is unable to determine what impact, if any, the psychologist's conclusions with respect to the spouse's chronic pain, psychological difficulties, and impaired social and occupational functioning, have on an analysis of hardship.

As such, while the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, psychological, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to India without his spouse.

The record also does not contain sufficient evidence of hardship upon relocation to India. The applicant's spouse claims that they would have to live with the abusive son if they relocate due to their finances, but the applicant indicates in a sworn statement that he has a mango farm in India which makes money. This property and source of income were not discussed in the I-601 waiver application or on appeal. Moreover, although there is evidence of record that the applicant's spouse has undergone some medical treatments, the medical documents submitted reveal that she had those treatments in India, not the United States. Those documents additionally show that the applicant's spouse has visited India recently for medical treatment. This time in India, when taken in light of the fact that she is a native and citizen of India, that she knows an Indian dialect, and is unfamiliar with English, are all factors which denote that her hardship would not rise above the distress normally created when families relocate as a result of inadmissibility or removal.

The AAO notes that relocation to India would entail separation from some family members and other difficulties. However, because the record fails to provide sufficient evidence to establish the financial, medical, familial, or other impacts of relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and she returns to India with her spouse.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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. 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.