



U.S. Citizenship
and Immigration
Services

#5

[REDACTED]

DATE: **NOV 06 2012** e: BANGKOK, THAILAND

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B), 1182(i)

ON BEHALF OF APPLICANT:

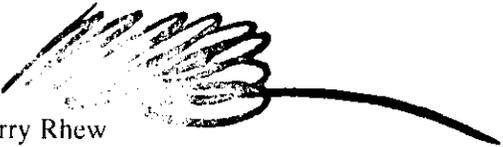
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INSTRUCTIONS:

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 with the field office or service center that originally decided your case by filing a 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand. The matter 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 found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within ten years of her last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act for entering the United States through misrepresentation. The applicant's spouse and child are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated March 28, 2011.

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship if the applicant is not granted a waiver of inadmissibility. *Brief in Support of Appeal*, dated June 29, 2011.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statements, medical records for the applicant's spouse, and various immigration application forms. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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

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.

The record reflects that the applicant entered the United States with a passport of unknown false identity at the Canadian border on April 25, 1997 and she departed the United States on March 28, 2009. The applicant accrued unlawful presence beginning on her 18th birthday (November 28, 1999) until her departure on March 28, 2009. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of her March 2009 departure from the United States.

The record does not contain sufficient evidence to determine whether the applicant's submission of a false passport upon entry at the Canadian border could be construed as willful misrepresentation the renders her inadmissible under section 212(a)(6)(C) of the Act, as the evidence presented indicates that the applicant was a minor at the time; she was accompanied by unknown adults upon entry; and she alleges that she had no knowledge of the details held within the documents presented. Thus, the AAO will first address whether the applicant has established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act before analyzing the issue of the false identity document and misrepresentation in order to settle whether she is inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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.

Counsel states that the applicant's spouse has been diagnosed with depression and separation anxiety conditions that cause loss of sleep, nightmares and difficulty in conducting daily routine functions. The applicant's spouse's medical evidence indicates that he was diagnosed with depression and is

currently taking prescription medication in line with this condition. The applicant's spouse states that he is the sole financial support for his wife and child, and is experiencing difficulty in maintaining his business while fully caring for his child due to the long hours required in order to preserve an enterprise. The applicant's spouse indicates his inability to devote sufficient time to his son while attempting to provide financial support has caused him additional stress which in turns exacerbates his current condition.

Counsel states that applicant's spouse continues to miss days of work and is unable to perform his regular duties due to the effects of his deteriorating mental and physical health, as well as the resultant prescriptive medical treatment. Counsel also asserts that applicant's spouse is often confused and unable to remain responsive or engaged with his child as needed due to these conditions, *frequently finding himself incapable of answering his son's repeated questions about the absence of the child's mother, or their family's future together.* This has produced increased feelings of depression and anxiety.

The applicant's spouse states that the applicant lived with him from the time they were married until *her departure for visa processing, and they have remained in a committed relationship despite this separation.* He also indicates that he is trying to remain positive for the applicant's sake, but feels upset when he hears the sadness in his wife's voice on the telephone while discussing their future together. The applicant's spouse indicated that it has been very difficult to convey all of the natural bench marks in their child's growth to the applicant via telephone without causing both of them to *become upset; and he is feeling overwhelmed with trying to handle all of his son's care without the applicant;* whereas in the past the applicant was the primary caretaker of their son in their partnership, it has now become an extremely demanding adjustment for him to take on that additional role in order to meet the immediate needs of his family. The applicant's spouse states he is struggling financially and emotionally to maintain both his family and business responsibilities and feels he is on the verge of a loss of his mental stability without continued communal marital support from the applicant. He states that he cannot imagine his life without the applicant; she takes care of him; his son has only been exposed to two loving parents and the loss of affection will be traumatic for the child; he is having great difficulty in caring for his son due to his work obligations; he has insufficient funds to pay for continuous extended hour child care; and he is not in a position to maintain two households.

The applicant's spouse has demonstrated that the separation from the applicant has caused him to suffer some negative physical and emotional consequences. With the absence of the applicant from the household, the applicant's spouse has become the primary caretaker for their young son and the *family's emotional base. He has also continued in his normal role as the financial anchor* of the family, supporting his household in the United States and his wife in India. The reality of adapting to these additional roles for extended periods of time has understandably created added stressors to his daily life that were outside of the routine for the family unit when the applicant was present. However, there has been no documentary evidence as to the qualifying relative's specific financial circumstances at this time, which would substantiate a finding that he is now facing extreme hardship based on their continued separation.

While we acknowledge the assertions of the applicant's spouse that he may experience some emotional and economic difficulties based on continued separation from the applicant if she remains in India and he resides in the United States, there is insufficient evidence in the record to demonstrate that these issues would rise to the level necessary for a finding of extreme hardship were the applicant to remain in India at this time.

In addition, although the applicant's spouse submitted limited evidence that his life and that of his son became more difficult with the applicant's absence, there was nothing provided for the record to demonstrate that he would also suffer extreme hardship if he were to relocate to India.

The fact that the separation of the family has undoubtedly caused some stress to the applicant's spouse cannot be denied, when the applicant who formerly shared responsibilities for the family unit while he worked outside of the home is no longer present. However, the applicant's spouse was also born in the same city in India where his wife is now residing and has visited her there on several occasions since her departure. The applicant's spouse would therefore be somewhat familiar with the environment and culture if he chose to relocate to India for reunification with the applicant. The applicant's spouse also provided insufficient evidence to demonstrate that his financial constraints, familial ties or medical needs were so deeply rooted in the United States as to rise to the level of extreme hardship were he to relocate to India. The applicant's spouse submitted a letter from his doctor diagnosing his condition as depression and also indicating that he is currently taking medication to alleviate the symptoms. However, there was no evidence presented to demonstrate that he would be unable to receive comparable treatment within India. In addition, although the applicant's spouse indicated in his statements that he is facing economic difficulty among others, with meeting child care needs, and that his business is suffering due to his inability to focus necessary time and energy, the applicant has not demonstrated that a reasonable alternative economic solution would be unavailable for her spouse upon relocation. There was no specific evidence supplied to establish that the applicant's spouse and family would be unable to reside in India comfortably.

Considering all of the hardship factors mentioned, there is insufficient documentary evidence to establish the existence of extreme hardship to the qualifying relative.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative. Having found the applicant statutorily ineligible for relief under section 212(a)(9)(B)(v) of the Act, no purpose would be served in discussing whether she requires or merits a waiver under section 212(i) of the Act, or whether she merits a favorable exercise of discretion.

ORDER: The appeal is dismissed.