

identifying that to avoid  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services



#5

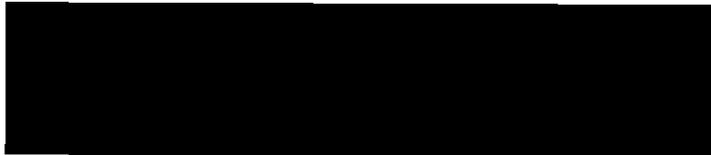
DATE: Office: LONDON, ENGLAND FILE:

SEP 27 2012

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of the United Kingdom and Canada who 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 attempting 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 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 return to the United States to reside with her U.S. citizen husband.

The District Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the act and that the applicant failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen husband, the qualifying relative, and denied the application accordingly. *See Decision of District Director* dated December 19, 2011.

On appeal, counsel asserts that that the District Director's decision is based on factual error in that the record contained evidence of the qualifying relative's home ownership, depreciated home value and self-employment status. Counsel further asserts that the District Director did not consider all of the hardship factors in the aggregate. Finally, counsel asserted that the District Director abused discretion by not taking into consideration the applicant's youngest child, (who he claims is a U.S. citizen), when balancing the equities against the adverse factors in determining whether the applicant merited a favorable exercise of discretion. *See Applicant's Attachment to Form I-290B, Notice of Appeal* dated January 4, 2012. Counsel seeks to show extreme hardship to the applicant's U.S. citizen spouse to overcome the misrepresentation ground of inadmissibility at section 212(a)(6)(C)(i) of the Act.

In support of the waiver application, the record contains, but is not limited to, counsel's Form I-290B and the accompanying attachment; resubmitted evidence from the initial Form I-601, Application for Waiver of Grounds of Inadmissibility filing; statements from the applicant and her spouse. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C)(i) 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:

- (i) The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 shows that on September 30, 2003, the applicant was interviewed by a U.S. consular officer in London regarding her application for a visitor's visa, which was denied. The applicant then entered the United States on three occasions (August 1, 2006; September 16, 2007 and March 28, 2008) by presenting her United Kingdom passport. The applicant was admitted to the United States under the Visa Waiver Program as a nonimmigrant visitor for 90 days, but on each occasion, she remained in the United States well beyond her period of authorized stay and departed the United States using her Canadian passport. On June 30, 2008, the applicant again attempted to enter the United States on the Visa Waiver Program. On the Nonimmigrant Visa Waiver Arrival/Departure Form (I-94W), she stated that she had never been denied a U.S. visa, despite the fact that her 2003 visa application was denied. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through misrepresentation.

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. In this case, the applicant's qualifying relative is her husband, a U.S. citizen. 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 the 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 children will not be separately considered, except as it may affect the applicant’s spouse.

The record contains hardship statements from the applicant and the qualifying relative; tax records from 1999 to 2009; financial records related to home ownership, trucking business and financial status; numerous letters of support documenting the qualifying relative’s ties in the Sikh and field hockey communities, and other documents.

The qualifying relative states that he is in financial distress as the value of his home is currently significantly less than the amount of the mortgage. While the qualifying relative submitted a few 1099-MISC Forms, he did not include 2009 or 2010 income tax returns. The appeal was filed on January 4, 2012 without any additional financial documentation. While the record contains evidence of some late bill payments, the record does not present a complete picture of the financial hardship faced by this family if living separately or if the qualifying relative relocates to the United Kingdom.

The qualifying relative and the applicant both discuss the emotional toll and mental strain that separation has caused. Letters from family and friends attest to the loving relationship between the applicant and her spouse and the emotional and financial hardship that the applicant's spouse is experiencing resulting from his separation from the applicant. However, the record does not contain any medical or psychological documents substantiating these claims.

On appeal, the applicant states that in London, she lives with her parents, two siblings and her two children. The applicant asserts that she is a financial burden on her parents as they do not have the financial resources to support the applicant and her two children while she is separated from her U.S. citizen husband. The applicant has provided no evidence showing any financial support she receives from her family for her and her two children; or any financial strain her support has caused her family such as, for example, payments from the qualifying relative or the applicant's parents or other relevant evidence of the applicant's family's increased financial burdens. The present record lacks sufficient evidence that the qualifying relative has suffered extreme hardship upon separation from the applicant due to her inadmissibility.

The present record also fails to show that the qualifying relative would suffer extreme hardship upon relocation to the United Kingdom to avoid the hardships of separation. While the qualifying relative may not have professional employment experience in the United Kingdom, the record does not contain evidence as to the difficulties that the qualifying relative may encounter in obtaining a truck driver's license, opening a business such as [REDACTED] in the United Kingdom or finding other employment. The record contains numerous letters of support from community members who have formed a relationship with the applicant and the qualifying relative through his Sikh temple or the field hockey community. However, the record lacks any evidence that the qualifying relative would be unable to practice his religion or play and coach field hockey in the United Kingdom. Loss of current employment and severing community ties are common results of removal or inadmissibility and the record fails to show that in this case, those losses are extreme.

In sum, the relevant evidence does not 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 her U.S. Citizen spouse as required under section 212(i) of the Act.

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.