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



U.S. Citizenship  
and Immigration  
Services

DATE: **AUG 22 2013** Office: ATLANTA, GA

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Atlanta, Georgia, denied the waiver application and 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)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, filed on July 6, 2012 and received by the AAO on May 1, 2013, counsel contends the applicant established extreme hardship to her husband, particularly considering he has lived in the United States since 1998, owns a business, and would be unable to care for the couple's two sons without his wife.<sup>1</sup>

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on January 9, 2000; affidavits from the applicant; an affidavit from [REDACTED]; a letter from the couple's son; documents from the children's school; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Human Rights Report for India and other background materials; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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

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<sup>1</sup> The AAO notes that counsel contends on page three of his brief that the applicant has sufficiently demonstrated extreme hardship to "his [sic] United States citizen spouse and lawful permanent resident parents." There is no evidence in the record showing that the applicant's parents are lawful permanent residents and no extreme hardship claim has been made for them. Therefore, the AAO has addressed only the hardship to the applicant's husband.

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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that she entered the United States in June 2001 by presenting a passport and visa that were issued to another person. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED] states that he and his wife have two sons. He states he has owned a convenience store since December 2003 and works seventeen hours a day, seven days a week. [REDACTED] states that his wife cares for their children full-time and that he does not get home until 10:00 p.m. In addition, he contends he has lived in the United States since 1998 and that his four siblings also live in the United States. According to [REDACTED], his mother is a lawful permanent resident, but returned to India and he sends her money to support herself. Furthermore, [REDACTED] states he cannot imagine returning to India. He states his children would not have good schooling and although they speak a little [REDACTED] they do not write in that language. According to counsel, the average annual income per person in India is \$3,240 and if [REDACTED] returned to India, his loans in the United States would likely go unpaid. In addition, counsel contends that Westerners are frequently targeted for theft due to their perceived wealth.

After a careful review of the record, the AAO finds that if the applicant's husband, [REDACTED] returned to India to avoid the hardship of separation, he would experience extreme hardship. The AAO acknowledges [REDACTED] contentions that he has lived in the United States for the past fifteen years, that his siblings reside in the United States, and that he sends money to his mother in India. In addition, the record corroborates his claim that he owns a convenience store. Relocating to India would mean leaving his business and all of its benefits. Furthermore, the applicant has submitted documents addressing country conditions in India that support counsel's contentions regarding the threat of theft in India. The AAO takes administrative notice that the U.S. Department of State states that petty crime, especially theft of personal property, is common, that the theft of U.S. passports is common, and that violent crime, especially directed against foreigners, has been increasing. *U.S. Department of State, Country Specific Information, India*, dated January 18, 2013. The U.S. Department of State also describes the threat from Anti-Western terrorist groups and insurgencies which may affect U.S. citizens directly or indirectly. *Id.* Considering these unique factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he returned to India

to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the family's situation, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO acknowledges that [REDACTED] would be a single parent if the couple's children remain in the United States with him, the record does not show that his hardship would be extreme, unique, or atypical compared to others separated as a result of inadmissibility or exclusion. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). According to [REDACTED] himself, he employs another individual at the convenience store and according to his "Net Worth Statement" in the record, even considering his mortgage and other liabilities, he has a net worth of \$331,158, and investments in five different companies worth \$228,500. [REDACTED] does not address whether he can hire additional help to assist with the convenience store or to help care for his children who are currently seven and eleven years old. The record also shows that the couple's children are doing well in school and there is no indication in the record that [REDACTED] or anyone in his family, has any special needs or any medical or mental health issues. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if [REDACTED] remains in the United States, the hardship he will experience amounts to extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's husband, the only qualifying relative in this case.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed