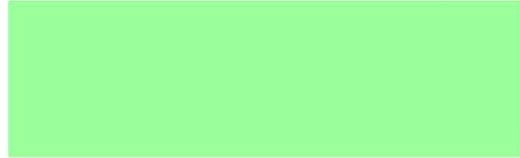


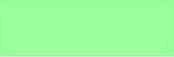


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 08 2013** Office: ST. PAUL, MN

FILE: 

IN RE: 

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a citizen of India who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility in order to remain in the United States with her spouse and children.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated December 7, 2011.

On appeal, counsel states that the applicant's qualifying relative would experience extreme hardship if her waiver application is not granted. Counsel also states that the applicant used an assumed name to leave India, because she was told that doing so would allow her to receive a visa. *See Attachment to Form I-290B, Notice of Appeal or Motion*, dated December 29, 2011.

The evidence of record includes, but is not limited to: statements from the applicant and her spouse, statements from their family and friends, financial documents, photographs, country-conditions information about India, and identification documents.

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

- (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.

In the present case, the record indicates that the applicant obtained an Indian passport and a non-immigrant visa with an assumed name, [REDACTED] and on September 19, 1996, entered the United States as a part of a theater group. In her October 21, 2011 statement, the applicant stated that she "was not a real member of the group," but she was told that she needed to join the group in order to come to the United States. On appeal, the applicant's counsel asserts that the applicant took on an assumed name because "friends told [her] that she would not get a visa on her own [and] changing her last name would allow her to get a visa." However, the applicant submits no evidence, other than her counsel's assertion, demonstrating that she would not have been able to obtain a visa to enter the United States with her true identity. We note that the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, in addition to misrepresenting her

identity, the applicant misrepresented her employment with a theater group in order to obtain a non-immigrant visa. Therefore, the AAO finds the applicant inadmissible under 212(a)(6)(C)(i) of the Act for having entered the United States through material misrepresentation.

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.

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).

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 factors 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 hardships to the applicant's children will not be separately considered, except as they may affect the applicant's spouse.

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, 631-32 (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, "[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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel states that the applicant's spouse owns two hotels and works between 60 and 80 hours a week to manage his business. The applicant, when she is not taking care of their sons, helps the applicant in his business by cleaning rooms and handling the reception desk. The record

contains evidence showing that the applicant earns income from her spouse's company. The applicant's spouse states that it would be impossible to run his business without the applicant's help. Counsel asserts that selling this business and relocating to India "would destroy their financial stability and livelihood," and it could result in bankruptcy for the applicant's spouse. Evidence in the record indicates that the applicant's spouse has taken business loans totaling over \$1.5 million.

Counsel also states that it would be extreme hardship for the applicant's spouse to raise their minor son alone while managing two businesses. Counsel further states that the applicant's spouse could suffer a "relapse of emotional trauma" if he were to separate from the applicant. The record indicates that the applicant's spouse was granted asylee status in 2000. The applicant's spouse states that if the applicant's waiver is not approved, they would be "forced to live separately," because he still fears of persecution and physical harm if he returns to India. The applicant's spouse is also concerned about their sons' emotional hardship should they separate from their mother.

Letters from family and friends attest to the applicant's good character and the loving relationship between the applicant and her spouse. They also corroborate the financial and emotional hardship the applicant's spouse would experience if the applicant's waiver is not approved.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship if he were to remain in the United States. In reaching this conclusion, we note that the applicant's spouse continues to fear persecution in India, and therefore, he cannot frequently visit the applicant if they were separated. We further note that because the applicant's inadmissibility is permanent, the applicant's return to India would result in an indefinite period of separation, due to her spouse's fear of returning to India. The record also demonstrates that the applicant's spouse owns businesses and employs the applicant. He spends long hours at work and needs the applicant's assistance running his business, as well as attending to their children's needs. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship if he were to separate from the applicant.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to India with the applicant. As noted above, the applicant's spouse was granted asylee status, and therefore, either was persecuted in India in the past or had a well-founded fear of future persecution on account of a protected ground. The applicant's spouse indicates that he cannot return to India because of his continued fear of persecution. Furthermore, the applicant's spouse has been in the United States since 1996 and has an established business. Given the evidence of his substantial business loans, relocating and closing his business in the United States would create severe financial hardships for him. The AAO concludes that, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship, should he relocate.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of her inadmissibility under section 212(a)(6)(C) of the Act.

In that the applicant has established that the bar to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's material misrepresentation to obtain admission into the United States, for which she now seeks a waiver. The mitigating factors include the applicant's U.S. citizen spouse and children, the extreme hardship to her spouse if the waiver application is denied, the absence of a criminal record for the applicant, letters attesting to the applicant's good character, and the applicant's length of stay in the United States.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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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. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.