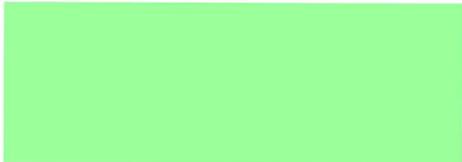


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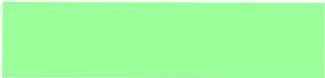
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



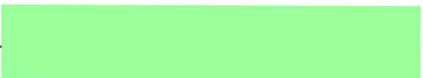
U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 25 2013** Office: FRESNO, CA

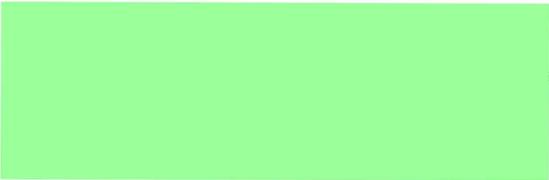


IN RE:



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

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director ("Field Office Director"), Fresno, California. 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. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure, and misrepresenting her intent to reside in the United States. She is married to a Lawful Permanent Resident (LPR). She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), (i).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 6, 2012.

On appeal, counsel for the applicant states that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility, and submits a brief and additional evidence in support of the appeal. *Form I-290B*, received on March 19, 2012.

The record includes, but is not limited to, counsel's statement; statements from the applicant and her spouse; a statement from the applicant's spouse's daughter; an I-797C Notice of Action, pertaining to the applicant's daughter's Form I-360, Petition for Amerasian, Widower, or Special Immigrant; court and legal records pertaining to the applicant's spouse's daughter's divorce; statement from [redacted] Ph.D., dated April 6, 2012; tax returns and documents related to the applicant's spouse's management of a convenience store; and copies of bank statements, utility bills and mortgage statements. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(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.

....

The record indicates that the applicant entered the United States as a visitor for pleasure in October 1999, but remained beyond her authorized period of stay until she departed in October 2003. As the

applicant resided unlawfully in the United States for over a year and is now seeking admission within 10 years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

- (i) 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 chapter is inadmissible.

The record indicates that the applicant entered the United States in September 2010, as a visitor for pleasure, and remained beyond the expiration of her authorized period of stay. The Field Office Director concluded that the applicant had failed to reveal that she was married to a U.S. citizen in applying for entry, misrepresenting her intent to take up residence in the United States. Counsel contests this basis of inadmissibility on appeal, stating that the applicant was not asked any questions and thus made no misrepresentation when she entered the United States in September 2010. Counsel and the applicant assert that the applicant was actually intending to see her daughter, who also resides in the United States.

The applicant has not offered any evidence to support her assertion that she was not intending to take up residence in the United States. The applicant herself has submitted a sworn statement admitting that she was entering the United States to take up residence with her husband. *Memorandum Record of Interview made in Examinations Section*, Department of Justice, dated April 22, 2011. Although the applicant refers to a statement submitted into the record by a witness, this witness does not corroborate the applicant's testimony that she was waived through at the border, but that questions were asked and answered, either by herself or the witness. *Statement of [REDACTED]* dated November 29, 2010. An answer that was given, according to the witness, was that the applicant was going to be dropped off at the mall, not that she was going to see her daughter or was entering the United States for any other reason than as a temporary visitor for pleasure. *Id.* Based on the inconsistencies in the applicant's testimony, the AAO finds the sworn statement taken at the time of entry to be the most credible evidence of the applicant's misrepresentation. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having misrepresented her intent to reside in the United States.

Section 212(a)(9)(B)(v) of the Act states:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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(i) of the Act states:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 . . . .

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 asserts on appeal that the applicant’s spouse will experience emotional and financial hardships upon relocation to India. Counsel explains that the applicant’s spouse’s daughter just escaped an abusive marriage and is residing with him for support.

The applicant’s spouse explains that his son recently immigrated to the United States and is also residing with him. *Statement of the Applicant’s Spouse*, received March 19, 2011. The applicant’s spouse also explains that, in addition to supporting his daughter and son financially and emotionally, he owns a residential property and his source of income is a convenience store that he owns and operates.

An examination of the record reveals substantial evidence corroborating the applicant’s assertion with regard to her spouse’s daughter. There are court records, attorney correspondence and a Notice of Action establishing the applicant’s spouse’s daughter had to escape a bad marriage and is now applying for adjustment of status as an abused spouse. The AAO finds the fact that the applicant’s daughter and recently migrated son are residing with her spouse to be a significant community tie, one that would result in uncommon emotional and physical hardship if severed.

The record also contains documentation supporting the applicant's assertion that her spouse owns and operates a convenience store and owns a residential property where he and his children currently reside. Based on this evidence the AAO concludes that the applicant's spouse has significant financial and employment ties to his U.S. community.

When these impacts are examined in the aggregate, the AAO finds them to rise above the common impacts of relocation to a degree of extreme hardship.

With regard to hardship upon separation, counsel for the applicant has asserted that the applicant's spouse will experience physical and emotional hardship due to the applicant's removal. *Statement in Support of Appeal*, received March 19, 2011. Counsel explains that the applicant depends on his spouse emotionally and physically to help him provide for his children and manage his business. Counsel further asserts that the applicant's spouse will suffer extreme emotional hardship and refers to a psychological report submitted into the record.

The record contains a statement from [REDACTED] Ph.D., dated April 6, 2012, stating that the applicant's spouse "presented" with symptoms of depression and anxiety and was "prescribed medication for his symptoms." *Statement of* [REDACTED] Ph.D., dated April 6, 2012. The statement is attached to her medical visitation report. Based on this evidence the AAO will consider the emotional hardship to the applicant's spouse when aggregating the impacts due to separation.

An examination of the record does not reveal any other evidence of hardship to the applicant's spouse arising due to separation. While the applicant's spouse may experience some emotional impact due to the applicant's removal, the AAO does not find the evidence of this hardship, even when considered with the usual hardships of separation, sufficient to establish extreme hardship. The record does not establish that the applicant's spouse will experience extreme hardship upon separation.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also 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 qualifying relative in this case. As the applicant has failed to establish that a qualifying relative will experience extreme hardship, no purpose would be served in determining whether she qualifies for a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act,

(b)(6)

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8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.