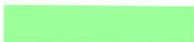


(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: **JAN 11 2013** Office: DENVER, COLORADO

FILE: 

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Field Office Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nepal who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his Lawful Permanent Resident spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated January 31, 2012.

The record contains, but is not limited to: statements from the applicant and the applicant's spouse, letters from interested parties, financial records, medical records, as well as various immigration applications. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

The record reflects that after an investigation within the applicant's birth country it was determined that the employment history entered on his approved Petition for Alien Worker (Form I-140) was in fact false. The applicant also misrepresented his work history on a Form G-325A, Biographic Information, filed in connection with his application for permanent residence. The Form I-140 petition on his behalf was revoked on October 5, 2007, and the applicant was placed into removal proceedings. On February 3, 2011 the removal proceedings were terminated without prejudice based on an approved Petition for Alien Relative (Form I-130). There is sufficient evidence in the record to demonstrate that the applicant willfully misrepresented material facts regarding his employment history to United States government officials for the purpose of gaining immigration benefits. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the AAO concurs in the applicant's inadmissibility under

212(a)(6)(C)(i) of the Act, and the applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act on appeal.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant or his 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 the 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 1292 (9th Cir. 1998) (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 applicant’s spouse indicates that she will experience financial and emotional hardship if the applicant is not allowed to live with the family in the United States. The applicant’s spouse indicates she is suffering from debilitating pain due to varicose veins in her legs. The applicant’s spouse states that because of her condition she has not worked for the past two years and must rely on the applicant to work and provide for her needs. The applicant’s spouse indicates she cannot seek financial assistance from her children because one of them is a full-time college student who does not work and the other is married with her own family and lives in another state. The applicant provided documentary support for this assertion with a report from Dr. [REDACTED], which indicates that the applicant’s spouse suffers from severe bilateral lower extremity varicosities, and requires surgery to repair this condition. *See evaluation from* [REDACTED] dated August 19, 2011. The applicant’s spouse also indicates that she is unable to sleep well and the applicant must massage her legs at night when she wakes with pain in order for her to receive any rest. The applicant’s spouse indicates that she was also informed prior to leaving Nepal that surgery would be required to alleviate her condition but she has been unable to go through these procedures due to a lack of medical insurance in both countries. The applicant’s spouse further indicates that she is a traditional Hindu who must follow the customs of her religion and separation is viewed as a sin. The applicant’s spouse further indicates that this means she cannot eat in the morning before touching the feet of the applicant and, if she were to go back to Nepal she would have to live in the household with his family. The applicant’s spouse states that she might then be faced with dishonor, as she would be required to work to help take care of the household, but because she cannot stand for long periods, would cause embarrassment for the family. The applicant’s spouse further indicates that she fears relocation because of the lack of quality health care and the political unrest within the country. The applicant’s spouse also indicates that she would not

want to leave her children behind particularly her unmarried son, who still lives at home in line with the traditions of their culture.

The applicant has demonstrated that the separation from the qualifying spouse would cause extreme hardship in this case. The applicant and the qualifying spouse have been married for a significant amount of time and created strong family bonds together. The applicant's spouse has been unable to work for an extended period of time due to her medical condition and relies solely on the applicant for her financial needs. It is unlikely at the present time that her son who is currently a full-time student, or her daughter who lives in another state with her own family and who has not fully completed the lawful permanent residence processes, have the capacity to fully care for the qualifying spouse's needs. To leave the qualifying relative without a means of financial support while she is unable to work would cause hardship that is extreme in nature.

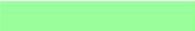
However, the applicant has not demonstrated that relocation would cause extreme hardship to his spouse. The applicant's spouse indicates her main concern is that she would dishonor her family because she would be unable to work around the family household in order to help care for their needs due to her medical condition. The applicant provided insufficient evidence to demonstrate that his family would not recognize his spouse's limitations and act accordingly. Moreover, the applicant also did not sufficiently indicate how his spouse currently manages any chores around their household in the United States. In addition, although the applicant's spouse expressed concern about adequate health care in Nepal, she has also indicated that she did not seek further treatment for her condition throughout the years of living in the United States. The country conditions discussed within the applicant's evidence have also been duly noted but there is insufficient information provided in the record regarding how they would specifically affect the qualifying spouse.

Although relocating away from immediate family members would create certain challenges, the applicant has not provided sufficient evidence to demonstrate that hardship due to the relocation of his spouse would exceed the struggles which would normally occur due to inadmissibility of a close relative.

In this case, the record does not contain sufficient evidence to 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 his Lawfully Permanent Resident spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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.

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**ORDER:** The appeal is dismissed.