

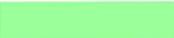


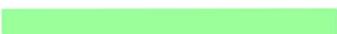
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **JAN 18 2013**

Office: NEW DELHI, INDIA

FILE: 

IN RE: 

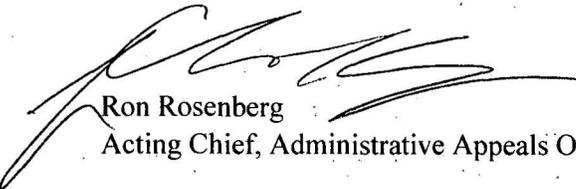
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of grounds of inadmissibility was denied by the Field Office Director, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the daughter of lawful permanent residents and is the beneficiary of an approved Petition for Alien Relative filed by her husband. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to return to the United States to reside with her U.S. citizen spouse and lawful permanent resident parents.

The Field Office Director concluded that the applicant was 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 spouse. *Decision of Field Office Director*, dated March 27, 2012.

On appeal, the applicant submits a brief, medical records for the applicant's husband and parents, and academic records for the applicant's son. The record also includes, but is not limited to, a brief submitted previously, hardship statements from the applicant, her spouse and parents, a psychological evaluation of the applicant's husband and child, medical records for the applicant's spouse and parent, financial documents, banking records, and articles on country conditions in India. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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)(1) of the Act provides, in pertinent part:

The [Secretary of Homeland Security (Secretary)] 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.....

The record establishes that the applicant admitted to seeking to procure admission to the United States on April 15, 2001 with a passport and visa that did not belong to her. *See Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act*, dated April 15, 2001; *Sworn Statement of the Applicant*, dated June 30, 2011. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud. Inadmissibility is not contested on appeal.

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. The applicant's qualifying relatives for a waiver of this ground of inadmissibility are her U.S. citizen spouse and her lawful permanent resident parents. 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 of Immigration Appeals (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 v. I.N.S.*, 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 record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse and parents are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s qualifying relatives.

The record shows that the applicant’s spouse would suffer extreme hardship if he were to relocate to India to reside with the applicant. The applicant’s spouse has been living in the United States since 1999, his entire family except his spouse lives in the United States and he is the co-owner and manager of two Subway franchise restaurants for which he is repaying bank loans. The applicant’s spouse lives in the United States with his newly arrived 17-year-old son and aging father-in-law and mother-in-law who both have significant medical needs documented in the record.

The record establishes that the applicant’s spouse has significant employment and property ties to the United States, beyond his family ties. The applicant’s spouse, now 53 years old, is in poor health and has had numerous, ongoing medical problems that are documented in the record including diabetes, hypertension, depression, anxiety and insomnia, for which he has sought medical treatment for several years. A country conditions report further indicates that that applicant’s husband would face financial hardship upon relocation since wages are lower in India

and would be insufficient to meet the basic needs of his family, including his specialized medical needs. Finally, the record also indicates that unhygienic conditions and unsafe drinking water are common in India and the applicant's husband has previously become physically ill on visits to India. The relevant evidence, when considered in the aggregate, demonstrates that the applicant's spouse would suffer extreme hardship upon relocation to India.

Regarding extreme hardship upon separation, counsel asserts that the applicant's husband has and will continue to suffer emotional, medical and financial hardship. The record indicates that the applicant has resided in India since August 2001 when she was removed from the United States, while her spouse has remained in the United States. The record also indicates that the applicant's 17-year-old son was, at the time of the appeal, residing with the applicant's spouse, his father, in the United States since the applicant's husband's naturalization.

With regards to emotional and medical hardship upon separation, the applicant's spouse states that his life has been crippled for over 10 years and that he is experiencing more and more emotional pain without the applicant including serious health consequences and thoughts of suicide. The applicant's spouse states that he is experiencing emotional pain and suffering as a result of the recent move of his son and parents-in-law to the United States from India. He is having difficulty absorbing the additional responsibilities and expenses with the recent expansion of his business and having to work seven days per week. The record contains a psychological evaluation diagnosing the applicant's husband with Major Depressive Disorder, Recurrent, Moderate, and noting a long history of depression and recent suicidal ideation with new changes in family responsibilities. *Report of Psychological Evaluation by [REDACTED] Ph.D.*, dated April 27, 2011. The medical records show that the applicant's husband's doctor has been treating him for diabetes mellitus, insomnia and hypertension for over three years for which he has required prescription medications. The applicant's spouse is also taking prescription medication to treat insomnia, and his doctor has referred him to another medical provider for additional treatment for depression.

The record shows that the applicant's son is having difficulty as a result of the recent separation from the applicant and has been diagnosed with depression and his school guidance counselor reports and transcript show poor performance in school and cite separation from the applicant as the cause. The applicant's husband states that he experiences chest pains and sadness when he sees his child suffering and missing the applicant. The evidence demonstrates that the applicant's child's condition has added to the applicant's spouse's emotional distress.

The applicant's spouse further reports that he is struggling financially to pay for the costs of separation, such as trips to India, in addition to his business expenses in the United States. The record also contains documentation of the applicant's spouse's business ownership showing that in both businesses his partners are not active in the running of the businesses requiring the applicant's husband to work seven days a week while caring for his son and the applicant's parents.

When considered in the aggregate, the emotional, medical and financial hardships in this case rise to the level of extreme.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to obtain a waiver of inadmissibility. Since the applicant has met her burden with respect to one qualifying relative, no purpose would be served in analyzing the hardship that the applicant's lawful permanent resident parents would face if the applicant was unable to obtain a waiver of inadmissibility.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether a waiver was warranted in the exercise of discretion, the Board stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

*Id.* at 301. The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship that the applicant's U.S. citizen spouse would face if the applicant were not able to return to the United States, the applicant's

family ties in the United States, and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's attempt to enter the United States through fraud.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In these proceedings, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.