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

(b)(6)

DATE: JAN 2 3 2013 Office: CHICAGO

IN RE:

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

(b)(6)

DISCUSSION: The application for waiver of grounds of inadmissibility was denied by the Field Office Director, Chicago, Illinois. 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for having procured admission to the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant was inadmissible under sections 212(a)(9)(B)(i)(II) and 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 his U.S. citizen spouse. *Decision of Field Office Director,* dated November 9, 2011.

On appeal, counsel submits another brief, additional medical records for the applicant's wife and mother-in-law, an article on pelvic inflammatory disease, financial and tax records for the applicant's mother-in-law, a criminal background check for the applicant and photographs of the applicant with his wife. The record also includes, but is not limited to, a brief submitted previously, hardship statements from the applicant, his spouse and mother-in-law, support letters from family members, friends and community members, a psychological evaluation of the applicant's wife, medical records for the applicant's spouse and mother-in-law, tax and financial documents, a letter from the City of Chicago regarding the applicant's work as a cab driver 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)(9) of the Act, which provides, in pertinent part that:

(B) ALIENS UNLAWFULLY PRESENT.-

(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.

...

(v) Waiver.-The [Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the [Secretary] 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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The Field Office Director determined that the applicant was also 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] 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....

U.S. Citizenship and Immigration Services (USCIS) records show that the applicant entered the United States on October 26, 1999 on a visitor's visa and returned to India on December 30, 2003. The applicant admits that he was in the United States from October 1999 to December 2003 in his signed Form I-601 waiver application, dated July 27, 2011. The record further shows that the applicant willfully misrepresented the duration of this trip to be 24 days on his 2006 nonimmigrant visa application at the U.S. consulate in Chennai, India, in order to procure admission to the United States. The applicant is therefore inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act for seeking admission after more than one year of unlawful presence and for procuring admission through willful misrepresentation of a material fact. Inadmissibility is not contested on appeal.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide 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 relative for a waiver of this ground of inadmissibility is his

U.S. citizen spouse. 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 mother-in-law would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's mother-in-law as a factor to be considered in assessing extreme hardship under sections 212(a)(9)(B)(v) and 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's mother-in-law will not be separately considered, except as it may affect the applicant's qualifying relative.

The record shows that the applicant's spouse would suffer extreme emotional, medical and financial hardship if she were to relocate to India to reside with the applicant. The relevant evidence shows that the applicant's spouse has been living in the United States since she immigrated as a two-year-old from her native Turkey. Her closest family members live in the United States, including her mother, who has been recovering from thyroid cancer and undergoing medical treatment since 2008 and who lives in the same household with the applicant and the applicant's wife, her daughter. The applicant's spouse has no ties to India and does not speak the native language of the applicant.

The record further shows that the applicant's spouse has a lengthy and extensive medical history of depression since age 13 for which she takes prescription medication and requires ongoing care for her symptoms of insomnia, anxiety and panic attacks. The medical records show that she has also suffered from asthma and allergic rhinitis since January 2006 for which she takes prescription medication twice a day and requires ongoing care. On appeal, counsel submits evidence of the applicant's spouse's operation on November 16, 2011 for acute appendicitis with possible rupture as a result of pelvic inflammatory disease. On appeal, counsel also submits an updated letter from the applicant's wife's physician who confirms that she recently underwent surgery for her appendix and that she has suffered multiple episodes of major depression and panic attacks throughout the past four years. Her physician further reiterates that she requires ongoing medical care for her major depression, severe asthma and allergic rhinitis. The record contains country conditions reports showing that the air quality in India is poor with an increased incidence of respiratory morbidity and insufficient medical providers for the country's population, all of which would aggravate the applicant's spouse's medical conditions.

Regarding financial hardship, the applicant's spouse has only a high school education and her medical conditions have prevented her from retaining steady employment in the United States. A country conditions report further indicates that the applicant's wife would face financial hardship upon relocation since wages are lower in India, especially for women, and would be insufficient to meet the basic needs of her family, including her specialized medical needs.

The record, as supplemented on appeal, demonstrates that the difficulties that the applicant's wife would face upon relocation rise to the level of extreme hardship.

Regarding extreme hardship upon separation, the applicant's spouse states that she would be devastated if she were separated from the applicant and her depression would worsen. As discussed above, the medical evidence shows the applicant's wife's lengthy history of depression and anxiety necessitating medical treatment and prescription medication. The applicant's wife's doctor further states that she "will have severe deterioration of her conditions if she were to be exposed to major stresses." *Letter from* dated January 4, 2012. The evidence shows that the applicant's wife's mental health will worsen upon separation from the applicant as a result of her increased emotional distress.

The applicant's spouse further claims that she needs the financial support of the applicant to meet the living expenses of her and her mother since she does not work. The applicant explains that she used to work at a donut shop but the manual labor brought on asthma attacks and worsened her depression. The record includes a monthly budget for the family and tax records showing that the applicant is the sole financial provider for the family in meeting monthly obligations. In addition, the applicant's mother-in-law is recovering from thyroid cancer and needs the applicant's financial support to maintain her mortgage payments and avoid foreclosure. The record shows that the applicant's wife is completely reliant on the applicant for financial support and could not rely on her mother given her mother's medical and financial conditions.

The record, as supplemented on appeal, demonstrates that the difficulties that the applicant's wife would face upon separation rise to the level of extreme hardship.

The applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant 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 remain the United States, the applicant's family ties in the United States, and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's attempt to enter the United States through willful misrepresentation and his prior unlawful presence.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his 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.