



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 24 2013**

Office: FRESNO

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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.

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,

[Signature]
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fresno, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record establishes that the applicant is a native and citizen of India who was found to be inadmissible to the United States under 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 gained entry to the United States by willfully misrepresenting a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 6, 2009.

On appeal the AAO determined that the applicant had failed to show his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant or if she were to remain in the United States while the applicant resided abroad due to his inadmissibility. The appeal was dismissed. *Decision of the AAO*, dated January 30, 2012.

On motion counsel for the applicant submits a brief, a statement from the applicant's spouse, medical documentation for the applicant's son, and a police report regarding a robbery of the applicant's store. The record also contains country information for India and financial documentation. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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.

As noted, the AAO determined that extreme hardship had not been established were the applicant's spouse to relocate to India to reside with the applicant or if she were to remain in the United States while the applicant resided abroad due to his inadmissibility. The AAO stated, in part:

The record does not support counsel's claim that separation would result in financial hardship to the applicant's spouse. It is noted that the record lacks details and supporting documentation of their business operation....

While counsel and the applicant's spouse make the claim that the applicant's children would suffer as a result of substandard education and living conditions in India, the record does not document this hardship. The submitted country condition information fails to establish that the applicant's spouse would be at risk as a result of Indian political instability or corruption. The submitted country condition information also fails to establish that the applicant's spouse would not have access to adequate healthcare in India and the record fails to document that the spouse and older son suffer from any medical conditions for which they would require treatment in India. . . .

On motion counsel contends USCIS erred by not giving full weight to the evidence in adjudicating the waiver request, failed to consider all relevant factors, and unfairly alleged the applicant committed a misrepresentation. Counsel contends that without the applicant his spouse will not be able to sustain the mortgage on her home and the loans to run the family's store and farm. Counsel contends that since the store has twice been robbed the applicant's spouse feels unsafe without the applicant's presence. Counsel asserts USCIS failed to consider medical consequences of relocating to India for the spouse and children as they have allergies to dust and pollen aggravated by the environment in the applicant's village in India, where there is a lack of hygiene. Counsel further asserts the applicant's children have lived in the United States their entire lives and the applicant's spouse fears that in India the family will be targeted as they are U.S. citizens. Counsel also asserts the applicant's spouse is concerned for safety in India as the applicant had been arrested in the early 1990s and could be subject to possible persecution, and because they are Sikhs they may be accused of associating with militants. Counsel contends there is evidence of political instability and police corruption with attempts to implicate foreigners in crimes to extort money. Counsel contends that as the applicant's spouse has been living in the United States since 1991 she has limited family ties in India with only one sibling

still there and that sibling is about to emigrate. Counsel further asserts that the misrepresentation USCIS determined the applicant had committed was unintentional.¹

In her affidavit submitted with the motion the applicant's spouse states that it is not possible for her and the children to remain in the United States without the applicant as she cannot care for her sons and be able to manage the store and farm; thus she would be unable to pay the mortgage. The spouse states that she cannot manage their home, finances, and children while dealing with the emotional burden of being without the applicant. She states that she needs the applicant for safety as the store was robbed twice. She states that her parents and four brothers are deceased, taking an emotional toll on her and she cannot imagine losing the applicant's support. She states she has no support structure in India as her sisters live in Canada or the United States. She further states that the applicant had left India because of problems with police who tried to connect him with Sikh militants and she fears if the applicant returns police will again harass him. The applicant's spouse further states that one son takes regular allergy shots and that the applicant's village in India has no adequate medical facilities for medical needs.

The applicant has established that his qualify spouse would suffer extreme hardship if she were to relocate abroad to reside with the applicant. The record establishes that the applicant's children are natives and citizens of the United States integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate them to India, in light of one son's medical condition and with a fear of substandard medical care in the area where they would likely live, constitutes extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. Alternatively, were the children to remain in the United States, the applicant's spouse would experience hardship due to long-term separation from her children. In addition, as the record reflects that the applicant's U.S. citizen spouse has lived in the United States since 1991, has little family remaining in India for support, and operates a business in the United States, relocating would cause extreme hardship.

The applicant has not established, however, that his qualifying spouse would suffer extreme hardship due to separation from the applicant, due to his inadmissibility, if she were to remain in the United States.

¹ The Field Office Director determined the applicant had gained entry to the United States through use of a fraudulent Alien Card, Form I-551. Counsel and the applicant asserted that the applicant did not knowingly present a counterfeit Form I-551 as he believed it to be genuine. On appeal the AAO concluded that the applicant had submitted nothing to the record in support of his assertion that he believed the Alien Card to have been genuine, thus found the applicant to be inadmissible under 212(a)(6)(C)(i) of the Act for having gained entry to the United States by fraud or willful misrepresentation of a material fact. The applicant submits no new evidence on motion to support the claim he believed the card to be genuine; and the finding of inadmissibility will not be overturned.

To begin, with respect to the assertion by counsel that the applicant's spouse will suffer emotional hardship due to separation, the applicant failed to provide any detail or supporting evidence explaining the exact nature of the qualifying spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. The assertions made by counsel regarding the qualifying spouse's emotional hardships have been considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It has also not been established that the applicant's spouse would be unable to travel to India, her native country, on a regular basis to visit him.

Counsel asserts the applicant's spouse will suffer financial hardship without the applicant. The record contains tax information from 2004, 2005, and 2006 that shows business related income and expenses, but lacks detail or supporting documentation about the business operations and the roles of the applicant and his spouse, or how the business income is dependent on the applicant's presence. Counsel and the applicant's spouse also assert the applicant is needed for the security of the business in that it has been twice robbed, but the record does not establish the his spouse would otherwise be unable to find security with an additional employee.

The record also contains a loan statement from 2007 and mortgage statement from 2006, but no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *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.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by

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statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 motion to reopen is granted and the prior decision of the AAO is affirmed. The waiver application is denied.

ORDER: The motion to reopen is granted, and the prior decisions affirmed. The waiver application is denied