



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: OFFICE: PHOENIX, AZ

[Redacted]

IN RE: JUN 19 2013

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:

[Redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by Field Office Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who has resided in the United States since October 30, 2002, when he entered without inspection. The applicant later filed an application for Asylum and Withholding of Removal using a false identity and fake documents. He 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 attempted to procure a benefit provided under the Act through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated February 7, 2013.

On appeal, counsel submits a brief in support, declaration by the applicant's spouse, psychological records, medical and financial records, letters from relatives and community members, and documentation related to country conditions in India. In the brief, counsel asserts that the applicant's spouse will suffer medical, financial, and emotional hardship upon relocation to India or if separated from the applicant. Counsel moreover contends that the Field Office Director erroneously failed to consider and evaluate all of the evidence in the record and applied the incorrect standard.

Counsel also submits copies of other AAO decisions. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions submitted by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

The record includes, but is not limited to, the documents listed above, the applicant's and his spouse's statements, psychological evaluations, medical records, tax returns and other financial records, letters of support, photographs, and documentation related to country conditions in India. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

- (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.

On December 18, 2002, the applicant submitted a fraudulent I-589, Application for Asylum and for Withholding of Removal, using a false identity, [REDACTED]. In support of the asylum application, the applicant submitted counterfeit documents and provided false testimony that the application and supporting documents were all true and correct. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a benefit under the Act, a grant of asylum status, through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

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. 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 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.

Counsel asserts that the applicant’s spouse will experience emotional and psychological hardship upon separation from the applicant. A psychologist reports in a September 30, 2012 evaluation that the spouse is suffering from depression, which is associated with the applicant’s immigration problems, and that she was prescribed medication for her symptoms. A recent letter from the psychologist indicates that the spouse fears losing the applicant through deportation and, although she stopped taking medication a few months before, she has resumed taking medication for her depression since she learned that the applicant’s immigration benefits were denied. The psychologist adds that the spouse has decreased concentration, motivation, and energy, and difficulty sleeping. The spouse’s counselor concludes in a letter that her symptoms will likely increase if the applicant is unable to remain in the United States.

Counsel additionally asserts that the applicant’s spouse has financial difficulties and that without the applicant’s income she will have difficulty covering expenses. Counsel submits various financial

documents including an apartment lease, tax returns, and bank account records. The spouse indicates that the applicant works as head chef at an Indian restaurant and that the couple is now attempting to repay the debt she accrued while the applicant was detained. However, the record does not contain any income statements to substantiate the claim that the applicant is working or the amount of his income. The W-2 income documents submitted with the 2010 U.S. federal income tax return indicate the applicant's spouse earned all of the couple's income, an amount of \$38,532, in that year. Other U.S. federal income tax returns submitted do not indicate what, if any, portion of the couple's income was earned by the applicant. Counsel submitted bank account records indicating that deposits were made into the couple's joint bank account; however, there is no indication that the applicant made these deposits or that they were a result of his income. The record does not contain any documentation of the applicant's income, such as a letter from his employer or paystubs, and whether he currently alleviates any financial shortcomings. The spouse indicates that she has significant monthly expenses and provides evidence of some expenses, such as rent payments, cable, and electricity bills. However, the record does not demonstrate that the spouse's income is insufficient to cover these expenses. Without details and supporting evidence of the applicant's income and expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

Furthermore, the applicant does not demonstrate that his spouse would experience medical difficulties without him present. The applicant's spouse claims that she suffered from high blood pressure while the applicant was detained and that she is again suffering from high blood pressure since his application has been denied. The applicant provides a letter from her psychologist stating that her blood pressure is elevated. However, the record lacks documentation from a medical services provider with details about the severity of the spouse's complete medical condition and how it affects her quality of life to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or spousal assistance needed, the AAO is not in a position to reach conclusions regarding the severity of a medical condition or treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

The record reflects that the applicant's spouse has suffered from depression due to the applicant's immigration problems and that the applicant's spouse would likely experience further emotional difficulties if the applicant returned to India without her. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to India without his spouse.

The applicant's spouse claims she will experience family-related, financial, emotional, and other hardship upon relocation to India. She explains that her mother's health has declined to the point where she is unable to walk, due to complications from her high blood pressure, peptic ulcers,

cardiac arrhythmia, rheumatoid arthritis, adult asthma, and loss of blood. Medical records are submitted in support. The spouse states that she could not think of leaving the United States with her mother in that condition. She adds that although the mother lives in Florida with her sister, the siblings are arranging for the mother to come live with the applicant and his spouse. Letters from the spouse's mother and the sister are submitted on appeal. Therein, the mother describes her difficulties walking and her inability to take care of her grandchildren because of her medical conditions. The mother indicates she is arranging to live with the applicant and her daughter, and that she also experiences depression when she thinks about losing the applicant, who she has come to think of as her own son, and her daughter if they relocate to India. The spouse's sister states that although she works two full-time jobs, and she is not home much of the time, she has been able to take care of their mother. Counsel asserts that the applicant's mother would be unable to relocate to India due to her precarious health conditions. The applicant's spouse moreover indicates that relocation to India would entail separation from her two adult children, with whom she is very close.

The spouse additionally claims that she will not be able to find adequate employment to meet her financial obligations in India. The spouse adds that she is worried about the applicant's ability to find employment in India, as well as their ability to access and afford necessary health care expenses for her depression and high blood pressure. The applicant's spouse moreover contends she would be subject to discrimination in India as an interracial couple. An article on inter-caste marriages in India is submitted on appeal. The spouse also states that she would be subject to dangerous country conditions in India, such as human rights violations and rape. Articles on country conditions in India are submitted in support. She states that she researched the part of India she would relocate to, and that women there do not work in the secular world. The spouse asserts that she does not know any Indian languages, has never been to India, and has no ties to India except for the applicant.

The record establishes that the applicant's spouse will experience family-related, emotional, and other hardship upon relocation to India. The applicant has submitted sufficient evidence to demonstrate that relocation would entail separation from his spouse's two children, who reside in California. Furthermore, although the record reflects that the spouse's mother resides in Florida, not California where the applicant and his spouse live, the spouse's, her mother's, and her sister's letters confirm that the mother, who is 78 years old, will relocate to Arizona to live with the applicant and his spouse.

In addition to separation from family, evidence of record indicates that the applicant's spouse, a native of the United States, may experience cultural adjustment and safety-related issues in Punjab, India. Furthermore, the applicant has demonstrated that his spouse has no ties to India, whereas she has long standing community, employment, and other ties to the United States. Evidence submitted indicates that the spouse may also experience language difficulties upon relocation, and that consequently she may have difficulty finding adequate employment in Punjab, India.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of

inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to India.

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.

Even if the applicant had established extreme hardship to his spouse, the AAO would not favorably exercise its discretion. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

The unfavorable factors include the following: the applicant's 2002 entry without inspection; his submission of a fraudulent asylum application with counterfeit documents for which he now seeks a waiver; his criminal warrant issued in 2003 for knowingly and willfully making a materially false, fictitious, and fraudulent statement in his application for asylum; his lengthy period of residence in unlawful status in the United States; his long period of unauthorized employment in the United States as stated on his Form G-325A, biographic information; his failure to attend removal proceedings resulting in him being ordered removed in absentia on January 10, 2006; his failure to attend three scheduled I-130 interviews scheduled in July 2008, November 2008, and April 2009; his claimed false identity made upon arrest by the Enforcement and Removal Operations (ERO) Dallas Field Office Fugitive Unit in January 2011; and his detention pursuant to the outstanding order of removal from 2011 to 2012.

Counsel asserts that that the applicant's mother-in-law relies on the applicant and that his step-son views the applicant as a member of the family. Though the AAO acknowledges counsel's claims, we do not find the record to demonstrate the mother-in-law's dependence on the applicant, and it will not be considered here. Counsel also asserts that the applicant is hard working and an active member of his community. The record indicates that the applicant attends a Sikh temple. It also indicates that he and his spouse previously owned an Indian restaurant and that they provided a luncheon for the [REDACTED] Diversity Fair Committee. The record also contains evidence of the

applicant's moral character, as stated in letters from friends and family. The record moreover reflects that the applicant provided assistance in the federal investigation of [REDACTED]

The applicant claims his asylum application was his sole misrepresentation and his sole negative factor. However, this is not the case. The applicant's misrepresentation in his asylum application and accompanying counterfeit documents occurred 11 years ago and constitutes one instance in a pattern of violations of U.S. immigration law. Prior to filing his asylum application, the applicant entered the United States without inspection in 2002. The applicant not only submitted counterfeit documents with his asylum application in 2002 but he also provides an application with false information and made false statements at his asylum interview. The applicant failed to attend removal proceedings and was ordered removed in absentia in 2006 and did not depart the country as required. He failed to attend three I-130 interviews in 2008 and 2009 because his lawyer advised him that doing so would cause him to be arrested on account of his outstanding order of removal. In 2011, he applicant then attempted to evade arrest by claiming to law enforcement that he was not the individual they sought to arrest and was subsequently detained for approximately one year. This behavior indicates that, despite assertions to the contrary, the applicant's willingness to commit misrepresentations in violation of U.S. immigration laws has not changed.

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 U.S. Citizen spouse as required under section 212(i) of the Act. The AAO further finds that the applicant's submission of a fraudulent asylum application, when added to his years of unlawful residence and employment in the United States and other immigration violations, reflect a long-term and continuous disregard for the U.S. immigration law, and to be a significant negative factor in his case. Thus, even if the applicant established his spouse would experience extreme hardship given his inadmissibility, which he has not, the AAO additionally finds that the applicant does not merit a favorable exercise of discretion.

In proceedings for a 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.

ORDER: The appeal is dismissed.