

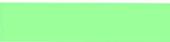
(b)(6)

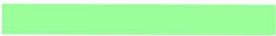


U.S. Citizenship
and Immigration
Services



DATE: **MAR 18 2013** Office: NEW DELHI, INDIA

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), and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India 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 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 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 was also found to be inadmissible 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 seeking readmission within 10 years of his last departure from the United States.

The applicant is the beneficiary of an approved Petition for Alien Relative and seeks waivers of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act in order to reside in the United States with his United States citizen 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 August 1, 2012.

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

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

In the present case, the record reflects that during an interview for an immigrant visa at the United States Consulate in New Delhi, India on February 13, 2012, the applicant testified that he entered the United States on October 30, 1994 with a passport and visa unlawfully obtained for the purpose of attempting to procure immigration benefits. The records also demonstrates that the passport the applicant presented for that 1994 entry had also been used by several other applicants to gain entry into the United States. There is sufficient evidence in the record to demonstrate that the applicant willfully misrepresented material facts regarding his identity to United States government officials at various times for the purpose of gaining 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, and the AAO concurs in the

applicant's inadmissibility under 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(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.

The record also reflects that the applicant accrued a period of unlawful presence in the United States. Specifically, the applicant was given until December 3, 1997 for voluntary departure by an immigration judge after withdrawing an application for asylum, but failed to depart the United States until April 23, 2008. The applicant accrued unlawful presence over one year of unlawful presence and he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. He requires a waiver under section 212(a)(9)(B)(v) of the Act.

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

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 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.

The applicant’s spouse indicates that she is suffering financially, emotionally and physically due to his inadmissibility. The applicant’s spouse states that she is suffering from various health problems such as vertigo, fatigue and cervical radiculopathy, which have been exacerbated by the applicant’s immigration issues and their separation due to his inadmissibility. The applicant has submitted a letter from Dr. [REDACTED], dated April 2, 2012, which indicates the applicant’s spouse has received treatment for these ailments since February of 2011. However, this documentation is insufficient to demonstrate that she is suffering more hardship than would be common under the circumstances. There were limited details provided regarding how any of these ailments have impacted her life to the extent of extreme hardship.

The applicant’s spouse also states that she is suffering financially without the applicant in the United States because her employment does not provide sufficient income to support herself and their daughter, while also paying for the costs of regular contact with the applicant through trips to India and daily telephone calls. The applicant submits a 2011 tax return for his spouse in support of this assertion along with an employment letter, and copies of his spouse’s and child’s passports with stamps showing travel to India. The applicant’s spouse also indicates that she must send money to the applicant in India because he is unable to find regular work to support himself, and this creates a further burden on her income that she would not have if he lived and worked in the United States. However, the applicant provided limited information indicating his employment situation in India or details regarding why he cannot assist his spouse and child with financial support at this time. The applicant has lived in India for numerous years and also owns various real estate properties but provided insufficient evidence to indicate that he is reliant on his spouse to provide income to a level which would cause extreme hardship.

The applicant's spouse indicates she is also suffering emotional and psychological hardship without the applicant in the United States. The applicant has submitted a psychological evaluation conducted by [REDACTED], PhD on July 12, 2012 for his spouse and his daughter. Dr. [REDACTED] indicates in his evaluation that the applicant's spouse has developed depressive- and anxiety-based symptomatology as a direct result of being separated from the applicant. Her symptoms include sleep disturbance, poor appetite, difficulty focusing, concentrating and paying attention, persistent sadness, chronic anxiety and crying spells. Dr. [REDACTED] also indicates that he has referred the applicant's spouse to a psychologist. While documentation from medical professional must always be taken into consideration in decisions of extreme hardship, the evidence is not found to sufficiently indicate that the applicant's spouse is suffering harm beyond what would normally be expected in the case of separation from a loved one due to inadmissibility. The applicant's spouse continues in her routine daily activities such as full-time employment, care of their daughter and also indicates she has become the main assistance for her parents in meeting their needs. The applicant has not sufficiently shown that his spouse has been unable to function in any of her routines without his presence in the United States to a level which would indicate extreme hardship.

Dr. [REDACTED] further states that the applicant's daughter is being deeply affected by separation from her father, and probably has attention deficit hyperactivity disorder. The applicant's spouse further indicates that the separation from the applicant has been detrimental to their daughter's development and the stress of being a single mother is very difficult for her. The applicant's spouse states she would blame herself if their daughter grew up abnormally due to separation from the applicant. However, the applicant has not shown that his daughter would face challenges that raise his spouse's hardship to an extreme level.

The applicant's spouse also indicates that she cannot relocate to India to live with the applicant. The applicant's spouse states that during her visits to that country since marrying the applicant, she has become ill-equipped to live under the conditions there, and consequently suffered various illnesses such as typhoid, liver function problems, vomiting, headaches and fever. The applicant submits various lab tests conducted for his spouse in India on November 25, 2011 to support this information with one lab culture indicating a positive result for salmonella typhimurium. The applicant also submits a chest x-ray for his spouse taken on the same date with no significant abnormality found. No significant details were provided by the applicant regarding the extent of his spouse's illnesses or whether they have caused any significant impact on her life. The applicant's spouse also indicates that their daughter has become very ill during her visits to India and has been unable to adapt to the food or temperatures easily, though the record does not show that she has suffered conditions that are untreatable or severe, such to significantly elevate the applicant's spouse's hardship.

The applicant's spouse indicates that her life is established in the United States, and all of her immediate family resides here, therefore it would be a hardship for her to relocate to India in order to live with the applicant. The applicant's spouse states that she must assist her elderly parents, especially her mother because of multiple medical problems. The applicant has provided medical documents indicating that his spouse's mother suffers from diabetes, high cholesterol, osteopenia,

and knee pain. The applicant also submits letters from the siblings of his spouse which indicate they cannot assist his spouse in caring for their parents because they must work full-time to take care of their own families, and his spouse already lives in the parents' household, and is therefore accessible. However, the record does not establish that the applicant's spouse's siblings are unavailable to assist their parents, such that her parents would lack support causing significant emotional hardship for the applicant's spouse.

The applicant's spouse further indicates that she has never held a job in India and it would be difficult for her to find suitable employment if she decided to relocate to that country. Yet, the applicant has not provided sufficient, probative reports or information to establish that his spouse would be unable to secure employment in India that is sufficient to assist their family.

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 above the common results of removal or inadmissibility to the level of extreme hardship, whether she remains in the United States or relocates abroad to join the applicant. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under sections 212(i) and 212(a)(9)(B)(v) 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, 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.