

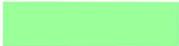


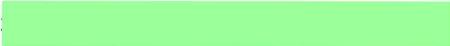
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 16 2013** OFFICE: PHOENIX, AZ

FILE: 

IN RE: APPLICANT 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by Field Office Director, Phoenix, Arizona, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the prior decision of the AAO will be affirmed. The underlying waiver application remains denied.

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 the AAO found that although the applicant demonstrated that his spouse would experience extreme hardship upon relocation to India, he failed to establish she would suffer such hardship in the event of separation. *See AAO Decision*, June 29, 2013. The AAO further found that even if the applicant had shown his spouse would experience extreme hardship in both scenarios, the record did not establish that he merited a favorable exercise of discretion. *Id.*

On motion, counsel submits a brief in support, supplemental statements from the applicant and his spouse, medical documents, evidence related to employment, letters from family and friends, immigration related documents, and a photograph. In the brief, counsel contends the AAO did not fully and cumulatively consider the emotional, financial, and other hardship the applicant's spouse would experience upon separation. Counsel additionally asserts that the AAO violated the applicant's due process rights by considering matters not previously raised or provided to the applicant in its discretionary analysis. Constitutional issues are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision.

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

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. 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 motion. The AAO therefore affirms the applicant is 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 contends the AAO failed to properly consider the psychological evaluation in a determination of the psychological and emotional hardship the applicant's spouse would experience upon separation. Counsel explains that the AAO's "cursory review" of the evaluation shows neither what weight the evaluation was given nor whether it was considered as evidence at all. Counsel moreover asserts that new evidence demonstrates that the applicant's spouse is financially and emotionally dependent on the applicant. The spouse states in an updated declaration that she was unemployed one month after they moved to Martinez, California in June 2013, to be closer to her adult son. An unemployment insurance claim form was submitted in support. She adds that although she is actively searching for work, she currently has no income apart from the unemployment benefits. The applicant contends in his statement that he worries she will be unable

to make ends meet without his financial support, and that although he could send money from India, his earning potential would be much less there. The spouse claims that they rely on the applicant's income as a truck driver, which is approximately \$4,000 a month. A letter with the company name and address of [REDACTED] is submitted on motion. Therein, the letter writer indicates the applicant earns 33 cents per mile. The spouse states the cost of living in California is significantly higher than it was in Arizona, and given her medical expenses, her responsibilities towards her mother, who is now living with them, and other expenses, she is having trouble meeting her financial obligations. The spouse moreover asserts that because her mother has a heart condition and high blood pressure, she has difficulties moving around. She contends her mother will require emotional and physical assistance as well as financial help, which will be difficult to provide without the applicant present. The spouse explains that she herself is suffering from high blood pressure, severe anxiety, and depression, and found it particularly difficult to cope when the applicant was in immigration detention. A copy of the spouse's annual physical examination is submitted on motion, along with copies of prescriptions for citalopram and enalapril. She concludes that she feels completely dependent on him emotionally and financially. Letters from family and friends are submitted in support, indicating the applicant's spouse has become even more depressed since she has lost her job, and that she needs the applicant's emotional and financial support.

In support of assertions on financial difficulties, on motion the applicant supplements the record with his and his spouse's statements, letters from friends and family, a letter from his employer, documentation of the spouse's unemployment benefits, and copies of prescription payments. However, despite the findings made in the AAO's decision on appeal, the record still does not contain sufficient documentary evidence of the applicant's income or household expenses. The letter indicating the applicant earns 33 cents an hour as a sub contract driver is signed by an unknown writer and is not on letterhead. *Letter dated July 16, 2013.* Given the lack of information on the letter writer's identity and position, there is no indication that the writer has the authority and knowledge to convey information on the applicant's income. Consequently, the AAO cannot give the letter significant weight. It is also noted that, although the letter writer states the applicant earns 33 cents per mile, the writer does not indicate how many miles the applicant drives or provide an estimate on the amount of the applicant's income. Nor are there any check stubs or other official documents which would verify his income. Thus, as on appeal, the record still does not contain sufficient documentary evidence of the applicant's financial contributions.

The applicant has shown that his spouse currently receives unemployment benefits. However, despite assertions on motion that the spouse's expenses in California are higher than those she incurred in Arizona, the record does not contain evidence, such as copies of household bills and a current lease agreement, of those elevated monthly expenses. Moreover, although their living arrangements are not discussed on motion, the AAO notes the applicant and his spouse's current address is the same address as the spouse's son [REDACTED]. *See letter from [REDACTED] October 19, 2012.* The applicant submits no documentation on what expenses he and his spouse are responsible for, if any, given that they apparently reside in the same home as her son. The spouse has additionally claimed she will experience additional hardship when her mother moves in with her from Florida, as her mother only has social security income and they will be responsible for her

financial support. Again, the applicant does not submit evidence on the mother's financial situation, or provide a letter from a medical services provider describing the assistance she needs. Without such documentation, the AAO is not in a position to evaluate the hardship the applicant's spouse will face without the applicant if her mother moves in with her and her son.

As the record still contains insufficient evidence on the applicant's current income and the spouse's expenses, the AAO remains unable to determine what, if any, financial hardship the spouse will experience without the applicant present.

The record has been supplemented with copies of notes from a 2013 physical examination and copies of prescriptions to demonstrate the spouse's medical difficulties upon separation. The applicant has demonstrated that his spouse experiences hypertension and is taking enalapril for the condition. However, as on appeal, the record still lacks an explanation in plain language from a medical services provider with details about the severity of her complete medical condition and how it affects her quality of life to allow an assessment of her medical needs and whether the applicant can assist with those needs. The examination notes reflect that the spouse was told to: undergo further testing, exercise, control her diet, lose weight, monitor her blood pressure, and take medications for her hypertension and anxiety.¹ There is no indication from the report, or any other documentation from a medical services provider, that the spouse's condition is particularly severe, or that the applicant's assistance is required for any of the recommended activities or other treatment. Without such evidence, the AAO cannot determine what, if any, medical difficulties the applicant's spouse will experience without the applicant present.

Counsel claims the AAO erred on appeal by failing to show it had properly considered the spouse's psychological hardship and other relevant hardship factors, cumulatively. On appeal, the AAO found the applicant did not provide sufficient evidence to demonstrate his spouse would experience financial or medical hardship without his presence. *See AAO Decision*, June 29, 2013 at 4-5. In light of the fact that the applicant did not meet his burden of proof in establishing other types of hardship, the spouse's psychological and emotional hardship was the only factor remaining for consideration. The spouse's psychological hardship, as recorded in the evaluation, statements from herself and the applicant, and letters from friends and family, were all considered on appeal.

The record reflects that the spouse is currently experiencing anxiety and depression. The spouse's statement, letters from friends and family, and the psychological evaluation all indicate that separation from the applicant while he was in immigration detention had a noticeable, negative psychological impact on the spouse. The psychologist describes the psychosomatic effects of separation, which include "depressed mood, low energy, low motivation, poor concentration, low libido, decreased interests, difficulty falling asleep, and difficulty staying asleep." *Psychological evaluation*, September 30, 2012. The psychologist moreover reports that before the separation, the spouse had no previous psychiatric history. *Id.* Counsel contends the AAO failed to properly

¹ The AAO further notes that, in addition to a lack of evidence on current household expenses, the record does not contain sufficient documentary evidence, such as copies of medical bills, to demonstrate the spouse would be unable to afford medical care or medications without the applicant's financial assistance.

consider the psychological evaluation on appeal, and that it did not analyze the evaluation except to summarily conclude that the spouse would not suffer extreme hardship upon separation. On appeal, the AAO acknowledged that the spouse would experience psychological difficulties without the applicant, and that she had experienced such difficulties when he was held in immigration detention. See *AAO Decision*, June 29, 2013 at 5. The record still indicates that the spouse has anxiety, depression, and that she experiences physical symptoms related to those conditions.

While the applicant has established that his spouse would experience psychological and emotional hardship upon separation, he has not demonstrated that this hardship, in addition to other hardship factors, in the aggregate rises above and beyond that which is normally experienced by relatives of aliens who separate as a result of inadmissibility. As discussed above, the record still lacks the financial evidence noted on appeal to establish the amount of his financial contributions, nor is there documentation to support current assertions of the spouse's increased living expenses since she moved to California. Additionally, the record still lacks an explanation from the spouse's medical services provider indicating the severity of her medical condition, and that treating it requires the applicant's assistance.

While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). In the present case, the spouse's documented psychological issues have been established, and are fully considered. However, the record does not establish that the nature and severity of her psychological difficulties, without sufficient evidence of other hardship factors, is enough to meet the extreme hardship standard. Therefore, when considering in the aggregate the documentation on the nature and severity of the spouse's psychological difficulties, as well as the insufficient evidence on other claimed hardships, the AAO cannot conclude that the applicant has met his burden of proof in establishing his spouse would experience extreme hardship in the event of separation.

The record does not contain any indication that the AAO's finding of extreme hardship in the event of relocation should be disturbed. The AAO therefore affirms the applicant has demonstrated his spouse would experience extreme hardship upon relocation to India.

As noted on appeal, the AAO 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.

On appeal, the AAO further found that even if the applicant had established extreme hardship to his spouse, the AAO would not favorably exercise its discretion. On motion, counsel contends that the AAO improperly considered several factors in its discretionary analysis, such as the applicant's failure to appear at the I-130 interviews, his failure to appear at removal proceedings and the subsequent *in absentia* order, and the fact that the applicant gave the name ' [REDACTED] ' to ICE agents instead of his true name.

The applicant has submitted new, credible evidence on why he told ICE agents his nickname, instead of his name, when he was caught in an immigration raid. The record contains sufficient documentation that the name he gave was actually a commonly used nickname. Furthermore, the applicant has submitted documentation indicating he did not intend to mislead ICE agents with respect to his identity, but rather, that he did not realize he was speaking with U.S. government officials acting in their official capacity. Moreover, immigration records reflect that the applicant admitted his true identity and legal name once the ICE agents showed them his picture. As such, the documentation reflects at that point the applicant may not have relayed his nickname to ICE agents to evade consequences of his immigration history.

The AAO further finds that, as an immigration judge has since reopened the applicant's *in absentia* removal order due to lack of notice, this failure to appear should not be held against him in a discretionary analysis. However, whether the applicant's failure to appear for three I-130 interviews, scheduled in 2008 and 2009 without giving timely notice of scheduling conflicts, was appropriately considered as part of his immigration history need not be decided here. The AAO again notes that the applicant has not demonstrated his qualifying relative would experience extreme hardship given his inadmissibility, and that consequently he does not meet the requirements for a waiver under section 212(i) of the Act.

Counsel cites to *Yepes-Prado v. U.S. I.N.S.*, 10 F.3d 1363 (9th Cir. 1993) to indicate that the AAO's considered irrelevant factors in its discretionary analysis. Unlike the evaluator in *Yepes-Prado*, who considered the alien's private sexual conduct between two consenting adults in deciding whether a waiver under former section 212(c) of the Act was warranted, the AAO solely considered the applicant's violations of immigration law, as well as actions related to his applications for immigration benefits and encounters with immigration officials. Furthermore, the AAO notes on motion the applicant concedes his entry without inspection, his filing of a fraudulent asylum

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application, his unlawful status, and his employment without authorization in the United States can be counted as negative discretionary factors.

The AAO affirms its prior finding that the positive equities in the applicant's case are insufficient to overcome the negative factors. The record reflects the applicant was charged in federal court with knowingly and willingly making a materially false, fictitious, and fraudulent statement in his application for asylum. *See criminal complaint*, January 29, 2003. The AAO agrees that the applicant subsequently provided substantial assistance to the government in that his cooperation with the government contributed to the detection of over 100 fraudulent asylum claims, he testified before the grand jury during [REDACTED] criminal proceedings, and he continued to work with ICE after [REDACTED] was convicted. An ICE agent confirms that the applicant "cooperated with the government" and that his assistance led "to the successful prosecution of [REDACTED], as well as, the detection of 100 fraudulent asylum claims." *Letter from [REDACTED]* July 23, 2012. What counsel fails to discuss on motion, however, is that at the time, the applicant did not have any status in the United States, and while he was providing such assistance, he received parole so he could remain in the country, and the federal charges against him were dropped. While the AAO does not minimize or diminish the applicant's contributions, they must be viewed in the context of the immigration and criminal benefits he procured during that time.

As stated in the AAO's appellate decision, and on motion by counsel, the applicant does have positive equities in his favor. Although he has not demonstrated his spouse would experience extreme hardship given his inadmissibility, the record still indicates in addition to the above-mentioned cooperation the applicant has strong ties with his spouse's U.S. citizen mother and children, his friends and family attest to his good moral character, he has no criminal convictions, he has expressed regret for filing a fraudulent asylum application, and he contributes to his community in a positive manner. *See AAO decision*, 7-8. However, the applicant's acknowledged immigration violations are serious adverse factors, and they span a number of years. The applicant admitted he entered without inspection in October 2002, and in approximately two months he filed a completely fictitious and fraudulent asylum application. In doing so, the applicant demonstrates that, from the beginning, he was willing to disobey more than one United States law. The applicant admits that he knew many of the assertions on the Form I-589 application were untrue, and he further admits that he presented those false statements as correct in his subsequent asylum interview. At the time, the applicant was a 27 year old adult, and as such he was old enough to know that his actions were wrong, and to appreciate the consequences of those actions. The fact that he continued the fraud through the interview process weighs heavily against him. Moreover, the applicant subsequently worked in the United States, knowing that he was not authorized to do so. This unauthorized employment, along with his unlawful status, continued until the applicant was taken into immigration custody.

The AAO concludes that the above-stated violations of immigration law, which occurred over a 10 year time span, are too significant to overcome, given the evidence of record on his positive equities. Especially in the light of his failure to demonstrate extreme hardship to a qualifying relative, the AAO finds the positive factors, when viewed in the appropriate light, fail to overcome the nature and duration of the applicant's serious violations of immigration law.

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 again 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 significant immigration violations in the applicant's case outweigh the positive equities he has demonstrated. Thus, even if the applicant established his spouse would experience extreme hardship given his inadmissibility, which he has not, the AAO affirms 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 although the motion is granted, the underlying decision of the AAO is affirmed.

ORDER: The motion is granted, but the underlying AAO decision is affirmed.