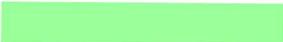


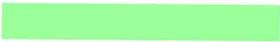


U.S. Citizenship  
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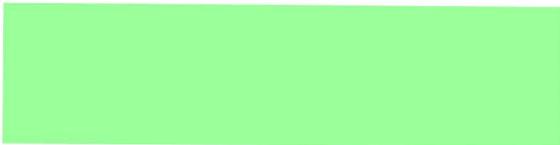


Date: **APR 16 2014** Office: NEBRASKA SERVICE CENTER 

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 Director, Nebraska Service Center, denied the waiver application and the matter 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 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States.

The director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Director* dated August 28, 2013.

On appeal counsel for the applicant contends that the waiver application was denied in error as the applicant's spouse will endure extreme hardship if the applicant is refused admission. With the appeal counsel submits a brief, an affidavit from the spouse, a psychological evaluation of the spouse and sons, affidavits from friends of the spouse, and school records for the applicant's sons. The record also contains statements from the applicant. 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 that:

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.

The record reflects that the applicant and her spouse married in India in 1992, and that the spouse subsequently entered the United States, married a U.S. citizen through which he acquired lawful permanent resident status, and became a U.S. citizen in 2006. The spouse divorced his U.S. citizen wife in 2007 and petitioned for the applicant and their two sons. At her visa interview in 2009 the applicant stated that she and her spouse first married in 2007 when in fact they had been married

since 1992. The consular then found the applicant inadmissible for misrepresenting her marital status.

A waiver of inadmissibility under section 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. 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-Morales*, 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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 since the applicant's sons have come to the United States they have become close to her spouse. The spouse states that the sons miss their mother yet they need their father. He states that he wants all of his children, including his two children with his former wife in the United States, to be together, but that without the applicant here this will not happen. The spouse states that if his sons return to India to be with their mother it will be a financial burden for him to visit. The applicant states that her sons want an education in the United States and are doing well, but are insecure due to her absence, so she fears their emotional insecurity will hamper their development.

A psychological evaluation of the spouse and two sons states that the applicant has been the primary caregiver for the sons, so they need her support, but they also now have close bonds with their father. It states that the spouse provides financial support as a store owner and works 12-hour days, six or seven days a week, so the sons are home alone, causing emotional distress to the spouse. It states that the applicant's spouse wants his sons to be in the United States for educational and healthcare reasons.

The psychological report does not establish that the hardships the applicant's spouse experiences are beyond the hardships normally associated when a spouse is found to be inadmissible. Although the applicant, spouse, and psychological evaluation reference hardship the applicant's sons, it is noted that they are not qualifying relatives in the context of this application so that any hardship they would suffer will be considered only insofar as it affects the applicant's spouse. Here, the AAO recognizes that the applicant's spouse endures some hardship in caring for his sons alone as a result of separation from the applicant, however his situation if he remains in the United States is typical to individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record.

The applicant states that her spouse works long hours and wants to expand his business, but it is difficult without her support. The psychological evaluation states that the spouse must pay his mortgage plus other bills and has no savings, so he fears bankruptcy or that he will lose his store. It

states that he also supports his children with his former wife. The evaluation states that the spouse receives rent from a nephew and niece, but they no longer physically live in the home and may stop payments due to other financial needs such as college payments and living expenses elsewhere.

Although the applicant and the psychological evaluation indicate that the spouse would have financial hardship without the applicant's presence, no documentation been submitted establishing the spouse's business, current income, expenses, assets, liabilities, overall financial situation, or his support of his other children, or how without the applicant's physical presence in the United States the spouse experiences financial hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 is acknowledged that separation from a spouse often creates hardship; however there is insufficient evidence in the record to find that the applicant's spouse suffers hardship beyond the common results of separation from the applicant. The AAO thus finds that the record has failed to establish that the qualifying spouse suffers extreme hardship as a consequence of being separated from the applicant.

Regarding the applicant's spouse relocating to reside with the applicant, the spouse states that he cannot go to India because he would be leaving his other children in the United States and it would be prohibitively expensive to fly back for visits. The applicant states that her spouse is emotionally and culturally settled in the United States and it would be impossible to restart the same type of business in India. The psychological evaluation states that the applicant's spouse has no home in India because siblings and relatives have claims on his mother's home when she dies, that he has no education or marketable skills, and that unemployment is the norm. The evaluation further asserts that the spouse cannot find trustworthy managers for his store when he is not present, so if he relocated to India the business would be destroyed. Although the psychological evaluation states the spouse has no education or skills to support himself in India, the record does not support that he will be unable to obtain employment or that he does not have transferable skills he could use in India, particularly given the assertion that he operates his own business in the United States.

The evaluation also states that in India the spouse would face a foreign culture with restrictions on his actions, work, and interests, and he would also face poverty, a dangerous environment, police ineptitude, and language barriers. However, the record does not contain any country condition evidence to support the spouse's safety and economic concerns. There is insufficient evidence in the record to show that the hardships the applicant's spouse would face would rise to the level of extreme hardship if he relocated to India.

The record contains references to the hardship the applicant's children would experience if the waiver application were denied. The psychological evaluation points out the school accomplishments of the applicant's sons since coming to the United States and asserts that the spouse cannot return to India because of the educational hardship to his sons. The evaluation states that the spouse also reports his sons must remain in the United States for their health because they

are now free of the health problems they suffered in India. As noted above, the applicant's children are not qualifying relatives so any hardship they would suffer will be considered only insofar as it affects the applicant's spouse. Here, the record does not establish that any effect on the education of the applicant's sons if they returned to India would cause extreme hardship to the applicant's spouse. The record also contains no documentation of health issues of the sons and how returning to India would create health concerns that would cause extreme hardship to the applicant's spouse.

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 her U.S. citizen spouse as required under section 212(i) 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.