



U.S. Citizenship  
and Immigration  
Services

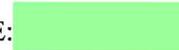
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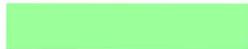
DATE **AUG 13 2014**

Office: NEW DELHI, INDIA

FILE:

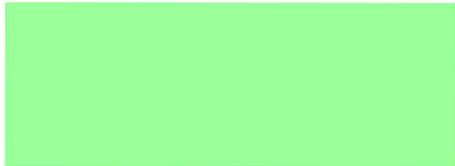


IN RE:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, New Delhi, India. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of India 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 having entered the United States with a visa obtained using a false name. He is the spouse of a U.S. citizen and has three U.S. citizen daughters. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 29, 2012.

On appeal, counsel for the applicant asserts that the primary hardship to the applicant's spouse is the medical condition of her daughter and that the Field Office Director did not properly weight the hardships to the applicant's spouse when determining whether or not she would experience extreme hardship. The appeal form states that additional evidence would be received within thirty days, however, no additional evidence was received and the record will be considered complete.

The record contains, but is not limited to, the following documentary submissions: statements from the applicant, her spouse and their daughters; extensive medical documents related to the applicant's daughter; copies of medical treatment records from India for the applicant's spouse's daughter; copies of business records related to the applicant's spouse's pizza business in Washington state; copies of phone bills, electrical bills, insurance bills and medical costs for the applicant's spouse; and educational records related to the applicant's spouse's daughter.

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

- (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant applied for a visa using a false name in 2000. The applicant's use of false name was a willful misrepresentation to procure entry to the United States and the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding.

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

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. Hardship to an applicant or their children 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-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. 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 entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant’s spouse has submitted several statements during the processing of her husband’s waiver application. She states that the primary hardship for her is the medical condition of her daughter, and that the absence of the applicant has resulted in physical and financial hardships for her. She explains that she has to work long hours at her pizza business, but often has to close it so she can take care of her daughter during periods of illness. She explains that her pizza business experiences ups and downs in revenue earnings, and that a slow economy has prevented her from hiring additional employees to help with maintaining the business. She states that if the applicant were present he could assist her financially with the business and with the physical caretaking of their daughters.

In her statements the applicant’s spouse details the medical history of her daughter, which includes numerous hospital visits for abdominal pain. There are several statements from treating physicians in the record pertaining to the applicant’s daughter, the most recent of which states that she suffers from endometriosis, a history of anxiety and depression and pelvic pain. A statement from another treating physician states that the applicant’s spouse’s daughter suffers from anxiety and has undergone bio-feedback treatment to help cope with her condition. The record also contains a school record which corroborates that her daughter did not attend school for a period in

the spring of 2009 when she was receiving medical treatment. The applicant's spouse notes that she took her daughter to India in order to receive less expensive medical care, and the record contains numerous medical documents from India indicating that she was tested and treated there for appendicitis.

An psychological evaluation in the record states that the applicant's spouse is experiencing physical symptoms consistent with depression. It further states that she worries about her daughters, feels guilty about not being able to be present more for her daughters and that her eldest daughter has to take on much of the responsibility for raising the younger two daughters.

The record does not establish that the applicant's spouse would be unable to hire additional help to maintain her business. General claims that the economy has prevented the applicant's spouse from hiring additional employees to care for the business are not established by the record, and it cannot be determined that the applicant's spouse would not be able to accommodate the demands on her work schedule due to her daughter's medical condition. In addition, the record reflects that the applicant's spouse is able to rely on her oldest daughter to help run the business. The applicant's oldest daughter contends that she is unable to attend college and assist her mother with running her pizza business, however, this is not an uncommon hardship. Based on these observations the record establishes that the applicant's spouse will experience some hardship due to having to work and care for her daughter during times of illness, but it does not establish that these hardships rise to the level of extreme.

With regard to financial hardship, the record fails to demonstrate that the applicant's presence would change the financial situation of the applicant's spouse. The applicant and his spouse were married in January 2005, and the applicant departed for India in October 2006. Tax returns for the business for the years 2010 and 2011 were submitted.<sup>1</sup> There is no evidence that the business was more profitable during the period the applicant was in the United States, or that he would be capable of alleviating the financial burden on his spouse if he returned. There is no evidence as to how he sustains himself in India, or that he would be unable to provide financial support from abroad. The record demonstrates the applicant's spouse has financial obligations, but it is not clear that this is due to the applicant's absence, that the applicant's presence would reduce her financial obligations, or that the financial hardship rises to the level of extreme.

We recognize that the applicant's spouse has three daughters residing in the United States, and that being a single parent for three children would presents some hardship. However, the record indicates that two of the applicant's daughters, born in 1990 and 1994, are now adults. The applicant's youngest daughter is now 17 years old. As such, they are of an age where they would need less parental supervision.

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<sup>1</sup> It is noted that the tax records that were submitted to the record are either not signed or the signature area has been blocked by other information so it is unclear who filed the forms or if they are the final forms submitted to the Internal Revenue Service. As such, their weight as evidence is limited.

The record does not contain sufficient evidence to establish that, even when considered in the aggregate, the physical and financial hardship on the applicant's spouse due to separation rises to the level of extreme hardship.

As noted by the director in the decision dated June 29, 2012, the applicant's spouse has not asserted that she could not relocate to India. The record indicates that she was born in India and resided there during her youth. Based on the record, there is insufficient evidence to demonstrate that the applicant's spouse would experience hardship rising to the level of extreme upon relocation to India.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse may experience some physical and financial hardship as a result of separation from the applicant. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* 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.