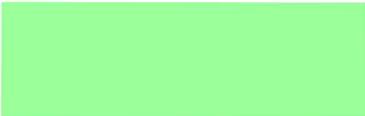




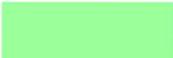
**U.S. Citizenship  
and Immigration  
Services**

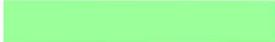
(b)(6)



DATE: **AUG 26 2014**

Office: BALTIMORE, MD

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)

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 having procured admission to the United States through fraud or a material misrepresentation. The applicant is the spouse and son of U.S. citizens and is the beneficiary of an approved Petition for an 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 wife, mother, brother, and two stepchildren.

In a decision, dated October 3, 2013, the district director found that the applicant had failed to establish that a qualifying relative would suffer hardship rising to the level of extreme hardship as a result of his inadmissibility. The application was denied accordingly.

On appeal, counsel states that the district director materially and substantially erred in the characterization and description of the facts and evidence of this case as it relates to the documentation filed regarding the applicant's qualifying relatives and in particular how his departure would affect them.

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.

The record reflects that the applicant last entered the United States on August 21, 2001 with a nonimmigrant visitor's visa issued to an [REDACTED]. The applicant had appeared at a U.S. consulate and obtained the visa under a name which was not his birth name. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or a material misrepresentation. He does not contest this inadmissibility on appeal. The applicant's qualifying relatives are his U.S. citizen wife and mother.

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

speaking 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.

The record of hardship includes: a psychological evaluation; medical documentation for the applicant's mother; copies of prescriptions for the applicant's spouse; financial documentation; and statements from the applicant's mother, spouse, brother, and father-in-law.

The record indicates that the applicant's spouse will experience extreme hardship as a result of the applicant's inadmissibility. In regards to separation, the record shows that the applicant's spouse will experience extreme emotional and financial hardship. The record indicates that the applicant's spouse has a history of depression as a result of being in an abusive relationship with her former husband. She has two sons from this marriage, ages 12 and 16 years old. The psychological evaluation and statements in the record indicate that the applicant's spouse attempted to commit suicide during the period leading up to her divorce. The applicant's spouse states that her bond with the applicant is very strong because they both experienced similar hardships in their lives, including divorce in a culture that is not very accepting of divorces. She states that the applicant worked hard to gain her trust and that when she married him, she moved from South Carolina to Maryland with her two children. She states that the applicant is her emotional support. In addition, financial records indicate that the applicant supports his spouse and stepchildren. Financial records indicate that the applicant's spouse owns a business in the United States. Although his income seems to fluctuate, in 2011 he earned \$71,088 in business income and earns \$24,000 per year as a cashier. In contrast, the applicant's spouse earns \$18,000 per year as a cashier. She states that the applicant is a partner in a business with his brother and that if he were to be removed she would not be able to run his part of the business. She states that she needs the applicant for financial support. Statements from the applicant's father-in-law support these statements of hardship. Thus, the record establishes that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. The applicant's spouse's history of emotional hardship and attempted suicide as a result of her abusive former husband and resulting divorce, as well as the emotional and financial reliance the applicant's spouse places on the applicant, indicates that she would suffer extreme hardship as a result of separation. Exacerbating these factors would be the fact that she is raising 12 and 16 year old boys and that she currently lives away from her other immediate family members, who live in South Carolina.

The record also indicates that the applicant's spouse would suffer extreme hardship upon relocation. While the record does not include current information on country conditions, the applicant's spouse's significant ties to the United States, would indicate that she will suffer extreme hardship upon relocation. First, the applicant's spouse has been living in the United States for at least 16 years. Her two sons were born in the United States and are in their formative adolescent years. The

record states that the applicant's spouse shares custody of her children with their father who sees them in the summer and during spring break. These factors would make relocating to India much more difficult, with the applicant's spouse potentially having to leave her children in the United States. Second, the applicant's spouse's father and brother live in South Carolina. Finally, they own a business in the United States. Thus, taking into consideration the applicant's spouse's ties to the United States, both familial and financial, it would be an extreme hardship for her to relocate to India.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if his waiver request is denied. Because extreme hardship to the applicant's spouse has been shown, no purpose would be served in discussing the potential hardship to the applicant's mother as a result of his inadmissibility.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 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 AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of

this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(i) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the applicant's case include the hardship his spouse and her children will face if he is not granted a waiver; the applicant's other family ties to the United States, including his mother and brother; the applicant's ownership of a business in the United States; and the emotional and financial support the applicant provides his mother, spouse, and stepchildren. The unfavorable factors in the applicant's case include his material misrepresentation to gain entry into the United States and his illegal residence in the United States.

Although the applicant's violations of immigration law are serious, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.