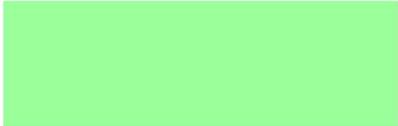




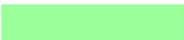
U.S. Citizenship
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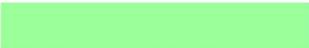
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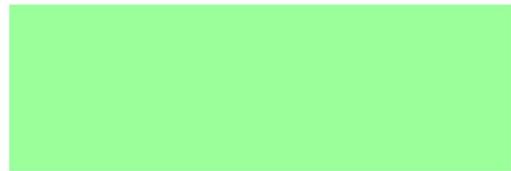
Office: NEWARK

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application and the matter 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 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) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated April 16, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by failing to consider the cumulative effect of hardships to the applicant's spouse and not finding her spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief; affidavits from the applicant and her spouse; employment and other financial information for the applicant and her spouse; letters of support from family and friends; school records for the spouse's sons; general mental health information; information on psychiatry and country conditions in India; and copies of previously submitted documentation including a psychological evaluation of the applicant, spouse, and children and mental health records for the spouse's son. The record also contains other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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 entered the United States with a B-2 visitor visa in 2004 and later submitted a fraudulent diploma in an effort to demonstrate educational requirements to procure H-1B status and in support of a labor certification and Immigrant Petition for Alien Worker (Form I-140) filed on her behalf. Based on this information the field office director found the applicant inadmissible for fraud or misrepresentation. Neither counsel nor the applicant has contested the finding of inadmissibility.

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. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 states that the spouse’s first marriage was abusive and that it was emotionally devastating for the spouse to see his sons suffer during the custody battle with their mother. Counsel asserts that the constant relocation between India and the United States caused the spouse’s sons to do poorly in school, making the spouse feel like a failed parent, and that emotional abuse of their sons by their mother led the oldest son to have suicidal thoughts. Counsel asserts that the applicant has brought her spouse “back to life” and his mental health improved, but he needs her continued support to be able to focus on work as the owner of a business and to provide the missed maternal love to his sons. Counsel asserts that the applicant’s absence would trigger the spouse’s previous overwhelming symptoms of anxiety and depression.

The applicant’s spouse states that his first wife was unfaithful and verbally and emotionally abusive, stole money and assets, and neglected their sons. The spouse states that his sons were at times sent to India to stay with relatives, and a custody battle caused the sons to be called into court, where it broke his heart to see them under pressure. Documents submitted to the record show the applicant’s spouse was awarded sole custody of his sons. The spouse states that his oldest son became depressed as he felt his mother did not care about him, and that a school counselor sent him to psychiatric evaluation which led to him spending time in a hospital for therapy. A mental health evaluation of spouse’s son details him being shuttled between the United States and India, his feeling that his mother did not want him and was ruining their lives, his difficulty concentrating in school, and his hearing of voices telling him to hurt himself. The evaluation states that the spouse’s son had

been referred by a school counselor after he stated that he wanted to hurt himself. Documentation shows that the spouse's son was in a partial hospitalization program for children and adolescents from March to May 7, 2012.

The spouse states that he and the applicant have similar issues with previous abusive spouses. He states that he is now dependent on her love and support to thrive at work and to help at home, that she cooks according to their religious beliefs and cares for his sons, and his sons will be shattered if the applicant goes back to India and they lose their mother figure. In her affidavit the applicant states that her spouse relies on her to care for his sons and they would suffer instability and one son would relapse into depression if the applicant returns to India.

A psychological evaluation of the family describes the spouse's abusive first marriage and the abandonment of his sons by their mother and it diagnoses the spouse with major depressive disorder and a history of post-traumatic stress disorder. It states that he fears being unable to care for himself, his children, his business, or anything else without the applicant. The evaluation states that the applicant provides essential support for her spouse, who has a long history of family dysfunction and psychiatric issues. The evaluation suggests that the spouse would be overwhelmed and unable to cope if the applicant were to return to India as the spouse is now dependent on the applicant, causing him concern about the stability of his mental health and that of his sons without her. The evaluation states that the spouse has difficulty making everyday decisions without the applicant's reassurance, and that she brings him psychological peace and comfort while reassuring him to remain focused. It states that the spouse would not have the physical strength or emotional wherewithal to provide for his sons without the applicant's assistance.

Counsel states that the applicant's spouse has three separate jobs, but that the applicant's schedule allows her to care for his sons and that without the applicant the spouse would have to give up his newly-purchased business. The spouse describes his work schedule at multiple work locations, his loss of a leased business, and his recent purchase of a business and states that he needs the applicant to take care of his sons while he works. Counsel further asserts that the applicant would be unable to support herself in India, requiring her spouse to provide financial support, whereas the applicant is currently the higher wage earner. Documentation supports that hers is the larger salary.

Having reviewed the preceding evidence, we find the cumulative effect of emotional and financial hardship to the spouse would rise to the level of extreme due to separation from the applicant. In reaching this conclusion, we note the spouse's condition as well as that of his sons and the effect hardship to the sons would have on the spouse, given the spouse's prior abusive marital relationship which resulted in mental health issues for him and his oldest son. The emotional harm to the spouse's son resulted in emotional hardship to the applicant's spouse, which the applicant's presence has helped to alleviate as she is able to provide the care for the sons the spouse believed was missing. Further, while the applicant contributes economically because of her employment, her presence also allows the spouse to pursue his employment obligations and business interests.

We also find the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to India to reside with the applicant. Counsel asserts that if the applicant's

spouse were to relocate it could trigger episodes of the spouse's depression and PTSD, and that if the spouse's sons relocated their mental health would be jeopardized. The applicant's spouse states that his oldest son has been affected emotionally and that there is social stigma to depression in India where he believes the mental health care system is not comparable to the United States. Counsel cites information about the stigma of mental health in India and states that mental health services there are of poor quality and availability is limited. Country information for India submitted to the record indicates a lack of resources and manpower in the practice of psychiatry.

Counsel further asserts that the applicant's spouse would be forced to abandon his business, giving up a steady source of income, and that he has a lack of transferrable job skills so would be unable to provide financially for his sons and the applicant's daughter. The spouse states that if he relocated to India it would take months to find a job to support his family and that he has financial obligations to his sons and the applicant's daughter. The applicant states that if her spouse relocated he would be the sole caretaker and income for the family, but could not earn enough money as he has been gone for a decade. The psychological evaluation states that the applicant's spouse has no employment contacts in India as he has not been there for many years. The evaluation states that relocating to India would mean an inability for the applicant's spouse to manage his businesses in the United States so the businesses would fail, resulting in financial ruin for his sons because their mother provides no financial support.

Here the record shows that if the spouse were to relocate to India he would be leaving his business interests and be concerned about his financial and emotional status as well as the emotional well-being of his sons, if they were to accompany him, particularly given the mental health issues experienced by his oldest son and the likely difficulty finding adequate mental health care in India.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship.

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.

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 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 this matter are the hardship to the applicant's spouse, his sons, and her daughter, the spouse's gainful employment, letters of support from friends and family, and lack of a criminal record other than a 2008 conviction for violating a local prohibited acts statute that resulted in a fine. The negative factor is the applicant's submission of a fraudulent document in support of a labor certification and employment-based visa.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 been met.

ORDER: The appeal is sustained.