



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUL 10 2014

OFFICE: BLOOMINGTON, MINNESOTA

File: [Redacted]

IN RE:

[Redacted]

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:

[Redacted]

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 the Field Office Director, Bloomington, Minnesota, and 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 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 willfully misrepresenting material facts to procure admission into the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife.

The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated September 23, 2013.

On appeal, counsel asserts the Field Office Director failed to properly evaluate the evidence submitted in support of the applicant's waiver application, as the applicant's spouse will suffer extreme financial and emotional hardship because of the applicant's inadmissibility. *See Brief in Support of Form I-290B, Notice of Appeal or Motion (Form I-290B)*, dated November 22, 2013.

The record includes, but is not limited to: correspondence from counsel; letters of support; identity, psychological, and financial documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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 Act is inadmissible.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant was found to be inadmissible for having attempted to procure admission to the United States on May 29, 2001, by presenting a photo-substituted nonimmigrant visa to U.S. immigration officials at Miami International Airport. An immigration judge denied the applicant's request for asylum and ordered him removed on October 9, 2002. On appeal, the applicant does not contest this finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now Secretary of Homeland Security (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.

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. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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-Morales*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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, 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.

Counsel contends that the applicant’s spouse would suffer economic hardship in the applicant’s absence as: she is a member of four partnerships in the hotel business that the applicant manages because he has six years of hotel management experience, whereas his spouse lacks the skills, understanding, or capability to run a business or manage a hotel; the applicant’s spouse would be unable to attend business meetings, including construction and inspection hearings, as well as travel across the country because she must care for their two year-old son; the applicant’s spouse would be unable to hire an employee from their town to replace the applicant and could not afford to do so; and she would be unable to pay back her business loans and meet their monthly expenses, including their son’s elementary school costs. Counsel also contends the applicant’s spouse’s business partners rely on the applicant and his spouse to be on-site and to manage and care for hotels in Minnesota and North Dakota, as the business partners live in other parts of the country. In support of counsel’s contentions, the record includes statements from the applicant’s spouse and her business partners, in which they discuss the family and professional roles she and the applicant perform in relation to their family and her businesses. Also, the record includes financial statements and letters as well as tax records, indicating revenue and losses generated by the hotels, the amount of business debt owed, and the business taxes reported to federal and state agencies. The business evidence indicates that two partners of one corporate entity live in North Dakota. The applicant’s aunt and uncle further contend the applicant is needed to assist with a new hotel project in [REDACTED] Alabama, and if the applicant obtains legal status in the United States, he and his spouse would move to [REDACTED] where he will help his spouse manage the hotel.

The record includes evidence of the applicant's spouse's co-ownership of four hotel businesses and monthly household expenditures, amounting to approximately \$1,536. However, the record does not appear to include evidence of the applicant's specific income; tax forms seem to reflect that the applicant's spouse is the family's primary breadwinner. The record also does not contain sufficient evidence to establish that the applicant's spouse's business interests would be adversely affected by the applicant's absence, given the participation of multiple associates experienced in creating and running these businesses, or that she would be unable to meet her household's financial obligations without his assistance.

Counsel also contends the applicant's spouse would suffer emotional hardship in the applicant's absence as the applicant and his spouse have been married for more than 10 years. The applicant's spouse states that the applicant's absence would cause her and their family extreme hardship, because she would be a single mother with a young child; it devastates her to think of living a single life without the applicant; she worries about their son's future; and she plans to stay married to the applicant, because it is difficult for women in her culture to remarry as they and their children are often taunted upon remarriage. In support of these contentions, the record includes statements by the applicant and his spouse's family members and friends, noting the applicant's spouse's emotional state. The applicant presents no evidence explaining Indian customs and the societal views concerning traditions such as marriage, to corroborate his spouse's statements. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof.

Moreover, the record includes evidence that the applicant's spouse's emotional wellbeing has been affected by the applicant's immigration matters, as stated in a psychological evaluation of the applicant's spouse dated August 13, 2013. The psychologist diagnoses the applicant's spouse with major depression, recurrent, severe; generalized anxiety disorder; and obsessive compulsive personality disorder with histrionic personality features and dependent personality features. However, the record does not include evidence that the applicant's spouse has sought treatment or assistance as recommended in the evaluation. The record indicates that the applicant's spouse is experiencing some degree of emotional hardship, but without more details about her current emotional state and treatment, it is not possible to reach conclusions concerning the severity of her psychological condition. The evaluation also lacks details about the psychologist's qualifications and about his professional relationship to the applicant's spouse, particularly considering the geographical distance between them.

Though the applicant's spouse may experience certain hardships in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

The applicant's spouse indicates she would suffer extreme hardship upon relocation to India to be with the applicant as: she was born in the United Kingdom and has spent her life primarily in Western cultures; she has lived in the United States for 24 years; she barely speaks Gujarati; she

would have an extremely difficult time finding a job and establishing herself socially, given her limited professional skills and potential language barriers; her entire family lives in the United States, and to visit them would be very expensive; she would have to dissolve her business partnerships to pay off the business's mortgages and loans in the United States; she worries about the high costs of sending their child to an international boarding school; she and she is extremely anxious, depressed, frustrated, and nervous about living in a country that treats women with very little respect.

The record is sufficient to establish the applicant's spouse would suffer hardship if she were to relocate to India. The record includes evidence that she is the co-owner of four hotel businesses in the United States, although the record is unclear concerning the individual contributions and liabilities of each owner. Nevertheless, the applicant's spouse maintains close familial and community ties in the United States and has never lived in India. Though the record does not include evidence of country conditions, with respect to the applicant's spouse's concerns about the treatment of women in India, the U.S. Department of State's current country report states:

Sexual harassment can occur anytime or anywhere, but most frequently has happened in crowded areas such as in market places, train stations, buses, and public streets. The harassment can range from sexually suggestive or lewd comments to catcalls to outright groping. . . . [T]he Government of India has focused greater attention on addressing issues of gender violence. One outcome has been greater reporting of incidences of sexual assault country-wide, and Indian authorities report rape is one of the fastest growing crimes in India. . . . Although most victims have been local residents, recent sexual attacks against female visitors in tourist areas across India underline the fact that foreign women are at risk and should exercise vigilance.

Country Information, India, issued February 10, 2014.

Accordingly, the record demonstrates, in the aggregate, that the applicant's spouse would suffer extreme hardship upon relocation to India.

We 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 in 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. In re Pilch*, 21 I&N Dec. at 632-33. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or

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NON-PRECEDENT DECISION

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inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to his 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.