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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: JUN 26 2014

Office: ORLANDO

FILE: [REDACTED]

IN RE: Applicant: [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,

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, Orlando, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of India, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director, July 2, 2013.*

On appeal,¹ counsel states that the U.S. Citizenship and Immigration Services (USCIS) examiner who interviewed the applicant in 2011 made the applicant aware that she knew about his previous legalization application, then improperly used information from it to find him inadmissible for misrepresenting material facts. Counsel further contends, in the alternative, that the applicant is eligible for a waiver as his spouse would suffer extreme hardship if the applicant is removed, and he submits additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to: counsel's appeal brief accompanying Form I-290B, Notice of Appeal or Motion (Form I-290B); statements from the applicant and the applicant's spouse; a sworn statement by the applicant made before USCIS dated October 18, 2011; medical and psychological documentation for the applicant's spouse; financial documentation; and country-conditions information about India. 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.

The record reflects that in 2011, the applicant stated under oath to a USCIS officer that he had entered the United States from Mexico without inspection three times between 1981 and 1989. The record also reflects that the applicant was issued a B-2 nonimmigrant visa on June 1, 1990, at the U.S. consulate in New Delhi, India, and was admitted into the United States on September 7, 1990.

¹ The record indicates that the applicant submitted this appeal on July 26, 2013, indicating that he was appealing the Field Office Director's decision of July 2, 2013. The Field Office treated the appeal as a motion and dismissed the motion on December 31, 2013. USCIS withdraws its decision of December 31, 2013, and the AAO will issue a decision on appeal.

According to his 2011 sworn statement, the applicant stated when applying for his nonimmigrant visa in 1990 that he had never been to the United States because he was told not to say anything about his illegal entries. The applicant further attested that he knew that his visa application would have been denied if he had mentioned his previous illegal entries. The applicant was thus found to be inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through misrepresentation.

On appeal, counsel contends that the applicant never entered the United States without inspection prior to 1990 and that the USCIS officer improperly used information from the applicant's Legal Immigration Family Equity (LIFE) Act² application to find the applicant inadmissible, violating the provisions of confidentiality of information in section 245A of the Act.

Section 245A of the Act, 8 U.S.C. § 1255a, states in pertinent part:

(c)(5) Confidentiality of information.-

(A) In general.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

- (i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986;
- (ii) make any publication whereby the information furnished by any particular applicant can be identified; or
- (iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

(B) Required disclosures.-The Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or

² On June 1, 2001, the Department of Justice published an interim rule in the Federal Register that implemented section 1104 of the LIFE Act and the LIFE Act Amendments by establishing procedures for certain class action participants, which included class members in Catholic Social Services, Inc. (CSS), League of United Latin American Citizens (LULAC), or Zambrano legalization cases, to become lawful permanent residents of the United States. The final rule was issued June 4, 2002.

prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(C) Authorized disclosures.-The Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code.

(D) Construction.-

(i) In general.-Nothing in this paragraph shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes of information contained in files or records of the Service pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(ii) Criminal convictions.-Information concerning whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(E) Crime.-Whoever knowingly uses, publishes, or permits information to be examined in violation of this paragraph shall be fined not more than \$10,000.

(6) Penalties for false statements in applications.-Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

In *Uddin v. Mayorkas*, 862 F.Supp.2d 391 (E.D. Pa. 2012), the court found that the use of information connected to the applicant's Special Agricultural Worker legalization application did not violate the applicable confidentiality provision,³ which is similar to that of Section 245A of the Act, as the information was obtained from an independent source, specifically, stamps in the applicant's passport. The court held that "the confidentiality provision also provides that while the

³ Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6)

application process itself cannot be used as a means to deny adjustment of status, information obtained from an independent source may be used as grounds for a denial.” *Uddin*, 862 F.Supp.2d at 404 (citation omitted). *See also Lopez v. Ezell*, 716 F. Supp. 443, 445 (S.D. Cal. 1989) (“On its face, the language of [the Act] does not extend to the information not obtained directly from the application itself.”).

The record supports concluding that the interviewing USCIS officer became aware of the applicant’s LIFE Act application from independent sources, not from the original application itself. The USCIS officer, in the normal course of reviewing the applicant’s most recent adjustment application, was required to determine the applicant’s prior entries into the United States. The applicant presented to the USCIS officer his Indian passport that includes a Form I-94, Arrival/Departure Record, showing he was paroled into the United States on May 28, 1997, to pursue his LIFE Act application as a member of the LULAC class-action lawsuit. The record also reflects that the applicant, in his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), filed in May 2011, affirmatively noted that his Form I-485 application “under the LIFE Act,” filed in 2001, had been denied. The record therefore indicates that the officer’s questions regarding the applicant’s previous entries into the United States were not based on an impermissible use of information from the applicant’s LIFE Act application.

Moreover, the applicant signed a sworn statement and asserts in his Form I-601 that he misrepresented a material fact in his application for a nonimmigrant visa in 1990 in order to procure admission to the United States. The applicant had an opportunity, while the USCIS officer took his sworn statement, to testify that he had never entered the United States without inspection before 1990. Notwithstanding the applicant’s current statements that he never entered the United States without inspection and that he was tricked by the USCIS officer into saying that he, on three occasions, entered the United States without inspection before 1990, the record supports the Field Office Director’s finding that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden. As the applicant has been found to be inadmissible under section 212(a)(6)(C)(i) of the Act, the applicant requires a waiver under section 212(i) of the Act to overcome his inadmissibility.

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

The Attorney General [now Secretary of the Department 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.

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 the applicant 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. 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 v. INS*, 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 emotional and psychological hardship if she were to be separated from the applicant. The record includes a psychological evaluation for the applicant's spouse, which indicates that she has suffered from "varying levels of depression on and off since 2002" and that her depression "became severe and unbearable" when her previous husband died in 2005. The psychologist notes in his evaluation that the applicant's spouse's depression recurred in January 2012 and became worse after the applicant's waiver application was denied. The psychologist states that the applicant's spouse is on a medication regimen for depression and that she also suffers from anxiety, panic attacks, migraine headaches, and insomnia.

Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the emotional hardship to the applicant's spouse, and the symptoms she has experienced, are atypical or unique compared to others separated from a spouse. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Medical documentation in the record indicates that the applicant's spouse also suffers from hyperlipidemia and osteopenia. However, there is no indication that the applicant's spouse is unable to receive treatment for these medical conditions without the applicant's support.

The applicant makes no claim that his spouse would suffer from financial hardship if she is separated from him. The record includes a copy of the applicant and his spouse's 2012 federal income tax return, showing an adjusted gross income of \$120,469. The applicant's spouse asserts that without the applicant, she cannot maintain his business or "work normally," and this would cause her to lose her home and creditworthiness. No evidence in the record, however, shows that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence.

The AAO recognizes that the applicant's spouse will endure certain hardships as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Regarding hardship that the applicant's spouse would experience upon relocation to India, the record indicates that the applicant's spouse, who is 63 years old, was born in Guyana and has no family ties to India. The applicant's spouse has resided in the United States since 1980 and became a U.S. citizen in 1989. The applicant's spouse also has two children and a granddaughter in the United States. The applicant's spouse has significant family ties to the United States and none, other than the applicant, to India.

The applicant's spouse also asserts that she could not live in India because she does not know any of the languages spoken there and thus would be unemployable and unable to establish a social life. Moreover, she is concerned as a Muslim about religious prejudice against Muslims. In addition, she is concerned about her ability to receive adequate medical treatment and her life being "cut short" because of the "difficult unhygienic living conditions" there. The applicant submits country-conditions reports describing ethnic and religious violence, violence against women and the quality and availability of medical care as varying considerably throughout the country.

Based on the evidence in the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to India to reside with the applicant. She has lived in the United States for nearly 35 years, has no ties to India, and would be unable to communicate there, which likely would affect her ability to find work and to establish social relationships. Her concerns about country conditions, moreover, are corroborated by the objective reports in the record.

Although the applicant has demonstrated that his spouse would experience extreme hardship if she relocated abroad to reside with him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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 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.