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



U.S. Citizenship
and Immigration
Services

DATE: **MAR 11 2014**

Office: SEATTLE, WA

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. 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, Seattle, Washington. The matter 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 seeking to procure documentation proving U.S. citizenship by fraud or willful misrepresentation of a material fact. The applicant's spouse and two children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Applicant for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated June 26, 2013.

On appeal, counsel asserts that the applicant provided sufficient evidence showing that his spouse would experience extreme hardship if the Form I-601 application is denied. *Form I-290B, Notice of Appeal or Motion*, filed July 29, 2013.

The record includes, but is not limited to, the applicant's spouse's statements, medical records for the applicant's spouse, a psychological evaluation of the applicant's spouse and children, financial records, and documents related to the applicant's family members. 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, that:

- (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:

- (1) The Attorney General [now the 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.

The record reflects that the applicant arrived at JFK International Airport in New York on February 25, 1993, requested asylum and was placed into exclusion proceedings; after his asylum application was denied by an immigration judge, he appealed to the Board of Immigration Appeals (BIA) on

December 15, 1993, and the appeal was remanded to the immigration judge on December 8, 2000; a Form I-130, Petition for Alien Relative, was approved for the applicant on March 23, 2000; he filed Form I-485, Application to Register Permanent Residence or Adjust Status, on March 5, 2004; and the immigration judge terminated proceedings without prejudice in 2008. The record reflects that the applicant presented a fraudulent U.S. birth certificate to apply for a U.S. passport on August 15, 1995. He is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure proof of U.S. citizenship, constituting other documentation under the Act, through willful misrepresentation of a material fact. The applicant does not contest his inadmissibility on appeal.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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 AAO will first address hardship to the applicant’s spouse if she relocates to India. The applicant’s spouse states that she will be separated from her parents, sisters and uncle and aunt; her father is a diabetic whose condition may worsen on account of stress caused by her returning to India; her mother has arthritis; she would experience great financial hardship if she relocates to India, because she and the applicant would not be able to find work that pays well; she is concerned that she and their children would face health risks due to pollution and the hot climate in India, without access to the same quality of health care as that available in the United States; and their children will suffer because they know nothing about life in India and will lose the opportunity to study in the United States. The record includes evidence corroborating her statements concerning her father’s medical condition and her hypothyroidism.

The applicant’s spouse also states that the political and economic climate in India is not stable; the applicant and she could be arrested and tortured by the authorities due to the applicant’s family’s political activities and previous problems with police; the applicant and one of his brothers were tortured; and one of the applicant’s brothers was killed by the police. The applicant’s spouse also fears their children could be targeted by authorities, as a way of getting to the applicant.

The applicant’s father, a permanent resident of Canada, states that the applicant’s brother [REDACTED] joined a revolutionary group in 1991 advocating for a Sikh homeland; the police arrested and tortured the applicant due to his brother’s affiliation; he asked the applicant to leave India and never to return;

_____ was murdered by the police in India; the police visit and question the applicant's father in a threatening manner whenever he returns; and it would be dangerous for the applicant's family to live in India. He also states that another son, _____ was arrested by the police in 1990 and had his thigh bone broken. The record includes a post-mortem report for _____ reflecting bullet injuries to his vital organs as the cause of his death. The record includes evidence that _____ was treated for a broken femur in 1990.

The record reflects that the applicant's spouse may experience emotional hardship due to separation from her family members and from the lack of comparable educational and health-care resources for their children in India. The record does not include evidence, however, that she and their children would reside in an area with pollution at levels that would affect their health. Moreover, the record does not include evidence showing that suitable medical care is unavailable in India. The record also does not include documentary evidence corroborating claims that the applicant's spouse would experience financial hardship there due to a lack of employment opportunities. Finally, although the record reflects that the applicant's family members experienced severe violence in the early 1990s, the record lacks evidence that the applicant, his spouse, and children would face similar harm upon relocation to India. The record is not clear about where the applicant's family would relocate. In addition, over twenty years have passed since the harm his family members experienced. The record does not include current information on the political group to which the applicant's brother belonged, such as the nature of the group's activities and the Indian authorities' response to the group and those who are perceived to be associated with the group. The record also is not clear about the applicant's involvement, if any, with this group. The AAO finds that the record includes insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that a qualifying relative would suffer extreme hardship upon relocation to India.

The AAO will now address hardship to the applicant's spouse if she remains in the United States. The applicant's spouse states that their family is very attached to one another; the applicant is a very good father and husband; he provides tremendous moral support; she worries about the effect that separation would have on their children; she is suffering from depression due to the applicant's uncertain future; and she fears that the police in India would kill him.

The licensed clinical social worker who evaluated the applicant's spouse and children states that the applicant's spouse meets the diagnostic criteria for adjustment disorder with mixed anxiety and depression; she scored in the severe range for symptoms of depression; she has feelings of hopelessness, inadequacy, and low self-esteem; she struggles with insomnia, loss of short-term memory and obsessive negative thoughts; and she has several symptoms of acute anxiety, including numbness in her fingers and toes, tightness in her chest, chronic stomach issues and chronic fatigue. The licensed clinical social worker states that the applicant's older child is very close to the applicant; and she has had insomnia, chronic headaches, difficulty concentrating, and neck and back pain. She was diagnosed with adjustment disorder with mixed anxiety and depression. The applicant's younger child was diagnosed with adjustment disorder with anxiety.

Concerning the financial hardship she would experience if she remained in the United States without the applicant, the applicant's spouse states that she cannot support their children alone; she also cannot afford daycare or babysitting on only her salary; she would not be able to make their mortgage payments without the applicant's contribution, because their mortgage is \$2,296 and she only earns \$1,800 a month; they may lose their home without the applicant's financial support. The record includes a mortgage statement in the amount of \$2,344 for the applicant and his spouse. The applicant and his spouse's 2009 federal tax return reflects that the applicant earns about one-third of the family income. According to her 2009 Form W-2, the applicant's spouse earned \$19,814.28 from [REDACTED]. Their family's 2009 tax return reflects \$9,773 in business income, which appears to be from the applicant's work as a taxi driver. It appears that the applicant's spouse would experience difficulty in paying their mortgage and meeting their other expenses without the applicant's financial assistance.

The record reflects that the applicant's spouse would experience significant emotional and psychological hardship without the applicant based on their close relationship. She also would experience hardship due to the psychological hardship their children would experience as a result of their separation from the applicant and from her own emotional difficulties as a result of trying to raise them without the applicant. In addition, the record supports finding that she would experience financial hardship without the applicant's income. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether he merits a waiver as a matter of overall 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.