

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

(b)(6)

[REDACTED]

DATE: **MAR 13 2014** Office: LOS ANGELES, CA [REDACTED]

IN RE: [REDACTED]

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:

[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:

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the appeal sustained.

The applicant is a native of India and a citizen of Canada 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 misrepresentation. The applicant is the spouse of a U.S. citizen, the daughter of U.S. citizens, and the mother to three U.S. citizen children. 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 her family.

In a decision, dated February 14, 2012, the field office director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and/or parents as a result of her inadmissibility. The application was denied accordingly.

In an appeal, dated April 25, 2012 and received by the AAO on March 1, 2013, counsel submitted a brief and additional supporting documentation. He stated that the record indicated that the applicant's spouse and parents would suffer extreme hardship as a result of her inadmissibility. On appeal, the record of hardship included: counsel's brief, statements from the applicant, statements from the applicant's spouse, a psychological evaluation, a statement from the applicant's father, birth certificates for the applicant's children, financial documentation, and medical documentation.

In our decision, dated August 23, 2013, we found that the record established that the applicant's spouse would suffer extreme hardship as a result of separation, but not as a result of relocation. We also found that the hardship claims concerning the applicant's parents did not rise to the level of extreme hardship and were not supported by the record.

On motion, counsel submits additional evidence that the applicant's spouse cannot relocate to Canada. Counsel states that the applicant's spouse's mother is wholly dependent on him because she suffers from a wide array of physical and mental impairments and cannot relocate to Canada. Counsel states that the applicant's spouse will be faced with leaving his mother in the United States or separating from his spouse and experiencing extreme hardship. Finally, counsel states that the applicant's U.S. citizen parents also suffer from medical impairments in addition to owning a home and business in the United States.

New evidence submitted on motion includes: a naturalization certificate for the applicant's spouse's mother, financial documentation regarding the businesses owned by the applicant's spouse, medical documentation for the applicant's spouse's mother, and a brief.

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.

Because the applicant's inadmissibility stemming from her misrepresentation on September 2, 2005 was previously discussed and inadmissibility is not contested on motion, we will not address inadmissibility in this matter.

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 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 (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.

In regards to hardship to the applicant’s spouse, we previously found that the record indicated through statements and a psychological evaluation, that the applicant’s spouse was suffering extreme emotional hardship as a result of the long illness and death of his father in April 2012 and that this suffering would worsen if he were separated from the applicant. The record indicated that if the applicant were removed her spouse would then be responsible for raising their three children, caring for a mother with Alzheimer’s, and managing a business. The record established that the applicant and her spouse, as well as both their parents are a very close knit family. Statements indicated that the applicant and her spouse have been together since 1998 and serve as each other’s emotional support. The psychological evaluation diagnosed the applicant’s spouse with Major Depression, recurrent and severe and indicated that the applicant’s spouse was actively suicidal.

We did not find extreme hardship as a result of relocation because of the relatively favorable country conditions in Canada and because no evidence had been presented to indicate that other members of the applicant’s family could not relocate to or visit Canada with frequency.

We now find that the applicant has shown that her U.S. citizen spouse would suffer extreme hardship upon relocation to Canada. Not only does the record indicate that the applicant’s spouse continues to have very strong financial and familial ties to the United States, relocation would likely result in him leaving his widowed mother, who suffers from severe physical and mental problems and is wholly dependent on him. The record indicates that the applicant’s spouse’s mother has been living with

him for 10 years and for the past three years has been suffering from Alzheimer's, uncontrolled high blood pressure, and is under psychiatric care. Documentation indicates that the applicant's mother's condition will not improve, but will deteriorate with age. Thus, we find that in taking into consideration the totality of the circumstances in the applicant's case, including her spouse's substantial ties to the United States and the difficulties he would face in either relocating his mother to Canada or leaving his mother alone in the United States, we find that it would be extreme hardship for him to relocate to Canada.

We also find that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

We find that the applicant warrants a favorable exercise of discretion. The adverse factor in the applicant's case is her misrepresentation to gain entry into the United States. The favorable factors in the applicant's case include: the extreme hardship the applicant's spouse would suffer as a result of the applicant's waiver application being denied; the applicant's substantial family ties to the United States, including three U.S. citizen children and U.S. citizen parents; her lack of any criminal record; and as attested to by her husband and family, her role as a loving and supportive caregiver.

Thus, we find that the favorable factors in the present matter outweigh the negative and we will favorably exercise the Secretary's discretion. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec.

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*NON-PRECEDENT DECISION*

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620 (BIA 1976). Here, the applicant has met that burden. The motion is granted and the appeal is sustained.

**ORDER:** The motion is granted and the appeal is sustained.