



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **OCT 01 2014**

Office: SEATTLE

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by Field Office Director, Seattle, Washington. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision is affirmed.

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, accordingly. *Decision of the Field Office Director*, dated June 26, 2013. We found that the applicant failed to establish that his spouse would experience extreme hardship, specifically if she relocated with him to India, and we dismissed the appeal accordingly. *Decision of the AAO*, dated March 11, 2014.

On motion to reopen and reconsider, counsel provides country-conditions information and an updated statement from the applicant's father to support his assertion that the applicant's spouse would experience extreme hardship if she relocated to India. *Brief in Support of Motion*, dated April 10, 2014.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Based on the updated documentation provided, which includes new facts, the requirements of a motion to reopen have been met. The requirements of a motion to reconsider have not been met.

The record includes but is not limited to, the applicant's father's updated statement, a professor's report prepared in response to counsel's request that she address the applicant's ability to relocate in India, and numerous articles about biometrics and human rights in India. The entire record was reviewed and considered in rendering this decision.

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 an immigration judge denied his asylum application, he appealed to the Board of Immigration Appeals (BIA), 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.

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-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*, 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.

As we have already found that the applicant's spouse would experience extreme hardship if she remained in the United States without him, we will only address the applicant's claims related to hardship his spouse would experience upon relocating to India.

The applicant's spouse previously expressed concern that she could be arrested and tortured due to the applicant's family's political activities and past problems with the police in India. The claims on motion do not assert that she could be harmed directly. However, the applicant appears to assert that any potential harm to him would result in hardship to his spouse.

On motion, counsel asserts that developments in India significantly alter the applicant's ability to safely relocate. Specifically, counsel claims that security systems in India have changed; India recently launched a project to assign a 12-digit number to its residents; many states in India require landlords and hotel owners to provide lists of tenants and guests to the police; and Indian police have computerized their records. Counsel asserts that as someone who appears to be sought by the [REDACTED] police, there is "a significant possibility" that the applicant's name will appear in a national database and that he would be reported to the police if he rents a hotel room, apartment or room in a house. In addition, counsel asserts that the applicant would be at risk of detection, as he would have to obtain a national identity card. The record includes numerous articles related to counsel's claims.

The applicant's father states that his son [REDACTED] worked for the [REDACTED] police but later joined an organization to campaign for religious equality; he was arrested and tortured in November 1991; the applicant was arrested the next morning; [REDACTED] was killed in November 1992; the applicant went to New York in February 1993 and requested political asylum; the applicant would have been murdered if he had not left India; he was repeatedly arrested, tortured, and interrogated about the applicant's whereabouts; and he was threatened and instructed to call the applicant back from America. The applicant's father made similar claims on appeal. Moreover, the father's affidavit submitted on motion was prepared in India, and the document states that he is a resident of [REDACTED]. However, he also states in the affidavit that he resides in Canada. This inconsistency calls into question the validity of other statements in the affidavit, particularly as they concern the applicant's ability to reside safely in India now.

The record includes an anthropology professor's statement reviewing country conditions for Sikhs in India, finding that internal flight is not a viable alternative for a Sikh at risk of persecution in [REDACTED]. Though the applicant's name has been inserted into the statement's first page, the professor does not specifically comment on the applicant or his particular circumstances. The record also includes articles on the [REDACTED] group of political parties. However, the applicant does not claim that he or his family members are or were part of this group. In addition, the applicant submits a Canadian Immigration and Refugee Board issue paper from 2006 stating that Sikh survivors of human rights abuse cannot live safely in any part of India and a [REDACTED] document from 2003 stating that the [REDACTED] police pursue "wanted militants," particularly those who are "high-profile," throughout India. The record does not establish, however, that the applicant currently is wanted or that his spouse would be subject to threats or harm in India.

The record reflects that the applicant's father and brother experienced violence in the early 1990s. However, the record lacks sufficient evidence to establish that the applicant, his spouse, or his children would face similar harm upon relocation to India. The record is not clear about where the applicant's family would relocate. In addition, nearly 25 years have passed since the harm his family members experienced. The record does not include current information about the specific 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 and specifically whether his involvement would cause his spouse difficulties if she were to relocate to India now. Without providing the aforementioned type of evidence, the country-conditions information has

minimal weight to show that the applicant's spouse would face danger related to the applicant's family's past experiences.

Furthermore, as discussed in our initial decision, 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. However, the record does not include evidence 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. This type of evidence was not submitted on motion.

We find 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.

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, we find 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 motion is granted and the prior decision of the AAO is affirmed.