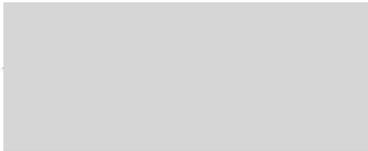


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

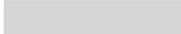


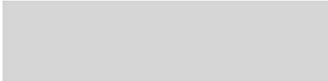
U.S. Citizenship
and Immigration
Services

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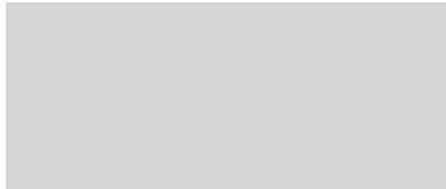
DATE: AUG 24 2015

FILE #: 

IN RE: Applicant: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

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, New Delhi, India, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). We granted a motion to reopen, the appeal remained dismissed and the application remained denied. The matter is before us again on a motion to reopen and reconsider. The motion is granted, our prior decision is withdrawn and the underlying appeal is sustained.

The applicant is a native and citizen of India who applied for a non-immigrant visa under a false identity and used that visa to procure admission into the United States in 2000. He 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 a visa and admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant 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 U.S. citizen spouse and three step-daughters (daughters).

The Field Office Director concluded that the applicant had failed to establish that a qualifying relative would experience extreme hardship given his inadmissibility, and denied the application accordingly. *Decision of Field Office Director*, dated June 29, 2012. We dismissed a subsequent appeal, also finding that the applicant had not met his burden of proof in demonstrating that his qualifying relative would experience extreme hardship upon separation and relocation to India. *AAO Decision*, August 13, 2014. Upon reviewing the applicant's motion to reopen and reconsider, we then found that the applicant's spouse would not experience extreme hardship, specifically if she relocated to India, and we affirmed our prior decision. *Second AAO Decision*, dated December 12, 2014.

On a second motion to reopen and reconsider, the applicant, through counsel, contends that one of his stepdaughters has significantly deteriorated into heroin addiction, which is attributed in part to his continued absence. *Letter in Support of Form I-290B, Notice of Appeal or Motion*, dated January 13, 2015. The motion includes, but is not limited to, a social worker's letter, counsel's letter, articles and information on drug abuse, and articles describing political issues and the prevalence of drug addiction in [REDACTED]

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 aforementioned documents, statements from the applicant, his spouse and their daughters; additional medical documents related to the applicant's stepdaughter; copies of medical records from India for the applicant's spouse's daughters; a 2012 letter from one of the stepdaughter's physicians; copies of business records related to the applicant's spouse's pizza business in Washington state; copies of phone bills, electrical bills, insurance bills and medical costs for the applicant's spouse; educational records related to the applicant's spouse's daughter; documentation of removal proceedings; other applications and petitions; and evidence of birth, marriage, divorce, residence, and citizenship. The entire record was reviewed and considered in rendering a decision on the motion.

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.

In the present case, the record reflects that in 2000 the applicant procured a non-immigrant visa using a false identity, [REDACTED] and presented that visa to U.S. immigration officials for admission into the United States. Inadmissibility due to fraud or misrepresentation is not contested on appeal or on motion. We therefore affirm that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa and admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

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 stepchildren 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 U.S. Citizenship and Immigration Services 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. 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.

The record reflects that the applicant's spouse has been in the United States for 22 years, since 1993. She asserts that she cares for her now-adult daughters, who had been mistreated by their biological father before she divorced him in 2000. The record includes statements from her daughters to support concluding that they have a close relationship with their mother and with the applicant. The applicant's spouse states that she is particularly worried about one daughter, [REDACTED] who the record reflects has significantly deteriorated into heroin addiction, and this decline is attributed to the applicant's absence. The applicant, through counsel, asserts that it is not realistic to conclude that his stepdaughter can move to India, given her lifelong medical and addiction issues. The applicant previously submitted medical records, including a 2012 letter from a physician, to show that [REDACTED] has suffered from endometriosis, anxiety, depression, and chronic pain from an early age, affecting her ability to attend school. The applicant's spouse and [REDACTED] were evaluated by a social worker on January 7, 2015, who states that the [REDACTED] continues to have chronic health issues and was placed into a pain management program; she suffers from severe depression; she has been addicted to heroin for two years; she has tried drug rehabilitation programs without success; she has been through detox four times and has relapsed every time; and moving to [REDACTED] where heroin use is rampant, would increase her risk of relapse and possible overdose. The social worker concludes that the applicant's spouse and her daughters are experiencing "a tremendous amount of stress." She believes that [REDACTED] because she has not responded to treatment and is concerned about the applicant's absence and its effect on her mother, faces an extremely high risk of suicide.

The applicant, through counsel, asserts that [REDACTED] India, is awash in drugs and has essentially no treatment facilities; and political fighting has occurred during the [REDACTED] elections. The record includes articles on political issues and on the serious and prevalent drug addiction problems in [REDACTED] where the applicant resides. One article notes that although private treatment centers have proliferated there, some are "run by quacks"; there are concerns that a whole generation will be lost to drugs. [REDACTED]

The record reflects that the applicant's spouse has resided in the United States for a long period of time. In addition, the record reflects that she cares for her daughter, who has serious medical issues and is addicted to heroin. The record includes evidence that the area that the applicant's family would reside in has serious and prevalent issues with drugs, including heroin. As such, the applicant's spouse would experience significant emotional hardship due to the unique hardships that her daughter would experience in [REDACTED] India. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship upon relocating to India.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

We note that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301 (citation omitted).

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the applicant's U.S. citizen spouse and daughters, extreme hardship to his spouse, hardship to his daughters, and his lack of a criminal record. The unfavorable factors include the applicant's misrepresentation and his 2002 entry without inspection.

We find that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The motion is granted, our prior decision is withdrawn and the underlying appeal is sustained.