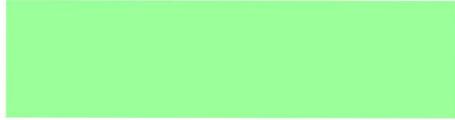




U.S. Citizenship
and Immigration
Services

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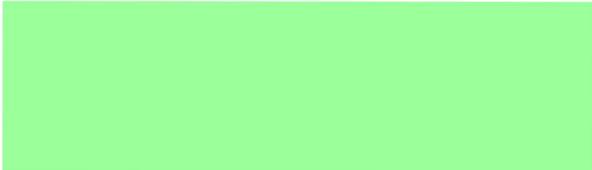
DATE: **MAR 16 2015** OFFICE: BLOOMINGTON

File: 

IN RE: 

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Bloomington, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion is granted, and we affirm our prior decision.

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied his Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. We dismissed the applicant's appeal, finding that although the applicant established his U.S. citizen spouse would experience extreme hardship if she relocated to India, he did not show that her hardship would be extreme if she were to remain in the United States.

On motion, the applicant asserts we did not consider the evidence of hardship in the aggregate and we committed clear error in finding that the applicant's spouse would not experience extreme hardship if she remains in the United States without him. He states that we incorrectly considered the facts related to his spouse's financial hardship and that her business interests would be "directly and adversely affected" without him. He also submits new evidence to support his claims of hardship to his spouse. *See Form I-290B, Notice of Appeal or Motion*, dated August 9, 2014; *see also Brief Submitted in Support of Motion*, dated August 8, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must 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 policy. A motion to reconsider a decision on an application or petition must, when filed, also 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). As the applicant has submitted new documentary evidence and asserted reasons for reconsideration, the motion to reopen and reconsider will be granted.

In addition to the evidence described in our previous decision, the record also includes, but is not limited to: additional affidavits by the applicant and his spouse; Internet articles concerning Hindu marriages, divorces, and the stigma of mental illness; and copies of Minnesota statutes obtained via the Internet concerning business partnerships. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

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

- (1) The Attorney General [now 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 the applicant attempted to procure admission to the United States on May 29, 2001, by presenting a photo-substituted nonimmigrant visa to U.S. immigration officials at [redacted] International Airport. An immigration judge denied the applicant's request for asylum and ordered him removed on October 9, 2002. The applicant has not departed the United States. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act. The applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his child is not relevant under the statute and is 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. 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-Morales*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. at 246-47; *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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

In support of his motion, the applicant submits an affidavit dated August 25, 2014, in which he indicates his spouse would suffer emotional, financial, and psychological hardship in his absence as: they have been married for 11 years and work as a team; his spouse “has been extremely anxious, saddened and frustrated” by the possibility of his removal to India, and “it would be shameful for her to seek . . . counseling” as a married Hindu woman; their separation would “create angst and frustration” between them, and his depression and sadness would affect her emotional stability; his

departure “would be embarrassing and humiliating,” given their close connections to the Hindu and Indian community in their hometown; his spouse would be unable to raise their child while managing and operating her four businesses, and his 13 years of experience in the hotel industry have allowed him to manage and operate her businesses; he works weekdays, weekends, and many nights while his spouse cares for their son; she does not have any experience or understanding in managing and operating the businesses but sometimes assists him with mailings and by obtaining items from his office; and her business partners rely on him to perform day-to-day operations and managerial functions, such as payroll, attending meetings, negotiating contracts, and records management.

The applicant also submits an affidavit from his spouse dated August 5, 2014, in which she indicates: she would be heartbroken watching the applicant “slowly drift away from the life [they] built together” while trying to maintain a healthy relationship with their son; she has not seen a psychiatrist since her last visit about one year ago, as their culture looks down on individuals who seek help for a mental illness, and she did not tell her family that she sought such an evaluation because it is shameful; she cannot imagine a life of divorce and remarriage as divorced, single mothers are frowned upon in the Hindu culture; she stays at home to take care of their son and household while the applicant works as the primary breadwinner, managing and operating her businesses; she was raised “in a stoic environment” and taught to “stick to [her] household duties as a housewife,” and it would be “impossible” for her to take the applicant’s place, as she is expected not to work as a Hindu woman; she has two million dollars in loans, and she would experience “immense and dire financial constraints” as a result of an “indefinite period of separation”; the applicant’s knowledge and experience are needed for the renovation and management of her businesses as well as a new hotel project in [REDACTED] Alabama; her current partners conduct business with her because of her husband’s ability to “smoothly manage and operate” the hotels; and she likely would lose her interests in the businesses and be ousted from the partnerships in the applicant’s absence, as none of her associates live in Minnesota or North Dakota, where the businesses are located.

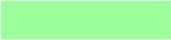
In our previous decision, we addressed the evidence showing that the applicant’s spouse was diagnosed with generalized anxiety disorder, major depression recurrent and severe, and obsessive compulsive personality disorder with histrionic personality features and dependent personality features. We noted that the record lacked evidence that the applicant’s spouse sought treatment or assistance as recommended in a psychological evaluation, and evidence of Indian customs and societal views concerning traditions such as marriage. To corroborate the statements concerning his spouse’s emotional and psychological hardship, the applicant supplements the record with articles that generally discuss Indian and Hindu communities’ attitudes and stigma about divorce and mental illness. While we recognize cultural and religious norms can affect an individual’s decision to pursue treatment, the supplementary evidence the applicant submits with his motion does not sufficiently address the severity of the applicant’s spouse’s conditions and hardship that may be related to such conditions. Moreover, we recognize the difficulties of raising a child in the absence of a parent and we consider hardship to the applicant and his child to the extent it results in hardship to the applicant’s only qualifying relative, his U.S. citizen spouse. The record lacks sufficient evidence regarding the severity of the applicant’s spouse’s mental health conditions. As a result, the record does not establish how hardship to the applicant or his child would affect his qualifying relative, his U.S. citizen spouse.

Concerning her financial hardship if she were to remain in the United States without the applicant, we noted in our decision dismissing the appeal that the record lacked sufficient evidence to establish that the applicant's spouse's business interests would be adversely affected by the applicant's absence or that she would be unable to meet her financial obligations without his assistance. To corroborate claims about his spouse's potential financial hardship, the applicant submits copies of Minnesota statutes covering business partnership dissolutions. He also asks us to consider that the applicant's spouse's business partners rely on his knowledge and business expertise and thereby conduct business with his spouse. While we recognize the applicant may be experienced in managing and operating hotels, the supplementary evidence he submits with his motion, limited to the state statutes, does not sufficiently address the possibility that his spouse's partnerships include multiple associates experienced in creating and running such businesses. Moreover, we note the record is unclear concerning the applicant's spouse's level of experience managing and operating hotels. In his sworn statement dated August 25, 2014, the applicant indicates his spouse "has no experience or understanding" regarding managing and operating hotels. However, according to information provided by the applicant's spouse and contained in various letters of support, she managed two hotels in [REDACTED] Tennessee with the applicant, she has performed administrative and receptionist duties, and she will manage a motel in Alabama with the applicant. In addition, the applicant does not submit evidence regarding the partnership's ability to hire another employee to manage their hotels and keep the partnerships intact. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

We noted in our decision dismissing the appeal that the record reflects two of the applicant's spouse's partners reside in North Dakota. However, in her November 2013 statement, the applicant's spouse indicates that she depends on the applicant to manage and run her partnerships for her, two of which are located in North Dakota, and it would be a hardship on her partners "to have to relocate . . . to Minnesota and/or North Dakota if [the applicant] leaves." Where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The supplementary evidence does not explain why some evidence shows two partners reside in North Dakota while the applicant's spouse claims they do not. Moreover, though the applicant's spouse asserts the applicant is the family's breadwinner, the supplementary evidence also does not explain why tax forms in the record reflect that she earns most of the family's income.

Although the applicant's spouse may experience a degree of hardship in the applicant's absence, for reasons expressed above, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

In our previous decision, we determined that the evidence established that the applicant's U.S. citizen spouse would suffer extreme hardship upon relocation to India to be with the applicant given her business, family, and community ties to the United States; conditions in India, a place she has never lived; and the normal hardships associated with relocation. The record continues to reflect the cumulative effect of the hardship the applicant's spouse would experience upon relocation due to the



applicant's inadmissibility rises to the level of extreme; therefore we will not revisit our previous determination in this decision.

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 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. at 886. Furthermore, to relocate and suffer extreme hardship, where remaining in 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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. The prior decision of the AAO is affirmed.