



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF F-Y-B-

DATE: NOV. 12, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark, New Jersey, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Director found that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601 accordingly.

On appeal, the Applicant asserts that her spouse would experience extreme hardship if her waiver application is denied. In support, the Applicant submits a brief, a letter from a licensed clinical social worker, the Applicant's spouse's statement, statements in support of the Applicant and her spouse, financial records, and country-conditions information about India. The entire record was reviewed and considered in arriving at a decision on appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.-The Attorney General [now Secretary of Homeland Security, (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects that the Applicant entered the United States with a B-2 visitor's visa on April 5, 1998; she departed the United States on January 11, 2006; she entered the United States with a B-2 visitor's visa on April 22, 2006; she departed the United States on October 19, 2006; and she entered the United States with a B-2 visitor's visa on December 4, 2006. The Applicant accrued unlawful presence from October 4, 1998, the date her authorized period of stay expired, until January 11, 2006, the date she departed the United States. The Applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her January 11, 2006 departure from the United States. The Applicant does not contest her inadmissibility on 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 Secretary of the Department 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's passport has a fraudulent entry stamp into India dated January 15, 2001. The Applicant admits that she was attempting to conceal her unlawful presence in the United States. As a result, she was able to procure admission to the United States on April 22, 2006. The Applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States by willful misrepresentation of a material fact. The Applicant does not contest her inadmissibility on appeal.

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Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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. The Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or the 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 U.S. Citizenship and Immigration Services (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-González*, 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 U.S. 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

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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, 1293 (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.

We will first address hardship to the Applicant's spouse upon relocation to India. The Applicant's spouse contends that he has three children with the Applicant. The Applicant's spouse's middle son maintains that his father is close with his son. The Applicant further references that her spouse would lose his community ties in the United States. The Applicant's spouse asserts that he came to the United States in 1998; he does not have any friends or family in India; and he would miss his friends and family in the United States. The Applicant notes that her spouse lost his Indian citizenship and will be viewed as a foreigner in India.

The Applicant further asserts that there is systematic abuse of women in India and violence against women is increasing in India. The record includes articles on sexual violence against women and women's rights issues in India. The Applicant states that in 1998, she and her spouse were happy in India, but the situation has changed as there have been massacres of Muslims in India; and they were younger and had a business and home in India when they were there previously. The Applicant states that her spouse would face violence and oppression from Hindus due to being a Muslim. The record includes an article on anti-Muslim issues in [REDACTED] India, where the Applicant is from.

The Applicant maintains that her spouse would have no access to health care as quality care is only available to the wealthy. The Applicant's spouse states that India has a poor medical system and he will not have access to his therapist. The record includes articles on health care and public health issues in India.

The Applicant states that her spouse has \$20,000 in credit card debt; he currently earns \$5,000 per month; and would likely earn \$420 to \$845 per month in India. The Applicant's spouse explains that he financially supports his son in college; his son needs this support to make it through college; and his son would be deprived of the American dream. The Applicant and her spouse's middle son states that his father is paying for his younger brother's education. The Applicant's spouse contends that he is a taxi driver; he has a very limited skill set; and he is too old to attend college or obtain a new skill set. He states that the unemployment rate is high in India and even if he picks up a new skill set the chances of obtaining a job with adequate pay is slim to none. The Applicant states that more than half of India lives in abject poverty, and more than twenty percent live on less than \$1.25 per day. The record includes articles on taxi fares in India and the economy in India, and credit card

statements for the Applicant's spouse. The record reflects that the Applicant's spouse is fifty-five years-old.

The record reflects that the Applicant's spouse has family ties in the United States, which include his three adult children and grandchild. He does not have family ties in India. In addition, the Applicant's spouse has resided in the United States for approximately 17 years. We note the country conditions as they relate to gender and discrimination issues as a source of hardship. Furthermore, based on the Applicant's spouse's age, financial debt, occupation, and country conditions, we find that he would experience financial hardship in India. Based on the totality of the hardship factors presented, we find that the Applicant's spouse would experience extreme hardship if he relocated to India.

Addressing the hardships that the Applicant's spouse would experience upon remaining in the United States without the Applicant, the Applicant states that her spouse has been receiving treatment from a therapist and is suffering from depression. In a letter dated April 2, 2015, the Applicant's spouse's licensed clinical social worker references that he has been treating the Applicant's spouse for depression since February 7, 2014; and he diagnosed the Applicant's spouse with Persistent Depressive Disorder, a chronic disorder marked by low mood, fatigue, hopelessness, and problems with sleep and appetite. He asserts that the Applicant's spouse recently experienced the death of his mother in August 2014. He states that the Applicant plays a crucial, irreplaceable role in the family; she provides her spouse with emotional support and household management; and the Applicant's spouse's mental and physical well-being would be threatened without her. The Applicant's spouse contends that the Applicant has helped him cope with his mother's death; she has always been there for him emotionally and keeps him mentally sane; and he works 12 hour shifts at night and looks forward to resting in her arms. The record reflects that the Applicant and her spouse cared for the Applicant's spouse's mother who had serious mental and physical medical issues. The Applicant states that her spouse would worry about her safety in India.

The Applicant's spouse states that he and the Applicant want to open an India restaurant to earn a decent living and pay off their debt; he is a taxi driver; and he has inconsistent income. The Applicant's spouse's niece states that his uncle works from 5 P.M. until 5 A.M. as a taxi driver; the Applicant, who has interest in driving a taxi, is unable to work as a taxi driver without a work permit; and the Applicant and her spouse could save money for retirement if they both worked. The Applicant and her spouse's middle son states that his parents are struggling financially; and he and his older brother try to support them financially, but they have their own families. The Applicant's spouse's 2013 federal tax return reflects an income of \$22,267.

The record reflects that the Applicant's spouse would experience significant emotional issues without the Applicant. In addition, he currently has financial issues which could be alleviated, at least in part, if the Applicant could work in the United States. His concern for the Applicant's safety is also a hardship factor based on the country-conditions information presented. Based on the totality of the hardship factors presented, and the normal results of a permanent separation from a spouse, we find that the Applicant's spouse would experience extreme hardship if he remained in the United States without the Applicant.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that her U.S. citizen husband would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance 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).

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and children would face if the Applicant were to relocate abroad, regardless of whether they accompanied the Applicant or stayed in the United States; community ties; support letters on the Applicant's behalf; and her apparent lack of a criminal record. The unfavorable factors include the Applicant's misrepresentation and periods of unlawful presence, as outlined in detail above. 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.

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ORDER: The appeal is sustained.

Cite as *Matter of F-Y-B-*, ID# 14271 (AAO Nov. 12, 2015)