



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

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

MATTER OF T-C-P-

DATE: SEPT. 28, 2015

APPEAL OF QUEENS 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 (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Queens Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been admitted into the United States through fraud or material misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, that his U.S. citizen spouse filed on his behalf.

The Director, in a decision dated November 3, 2014, concluded that the Applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant states that the Director did not properly evaluate the evidence in the aggregate and minimized the evidence of his spouse's psychological state and financial hardship. The Applicant also asserts that the Director improperly raised the matter of his son temporarily living overseas without explaining how it relates to the hardship determination.

The record includes, but is not limited to: briefs; identity and relationship documents; statements of the Applicant and his spouse; financial records, including copies of federal income tax returns; reports on conditions in India; a psychological evaluation of the Applicant's spouse; photographs; and documents in another language that lack translations. The entire record, with the exception of the untranslated documents, was reviewed and considered in rendering a decision on the appeal.¹

¹ According to 8 C.F.R. § 103.2(b)(3), documents submitted in a foreign language "shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Section 212(a)(6)(C) states:

- (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.

The record reflects that the Applicant was admitted into the United States on June 27, 2003, using an alias and an altered Indian passport with a counterfeit U.S. visa. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest the finding of inadmissibility.

Section 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states that:

- (1) The Attorney General [now the 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 Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. In order to qualify for this waiver, he must first prove that the refusal of his admission to the United States would result in extreme hardship to a qualifying relative. The Applicant's only qualifying relative is his U.S. citizen 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 deportation, 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, 885 (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 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.

The record contains references to hardship the Applicant and his child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the Applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the Applicant and their child will not be separately considered, except as it may affect the Applicant's spouse.

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The record reflects that the Applicant and his spouse, a native of India, have been married eight years and their son was born in [REDACTED]. The Applicant's spouse asserts that she would experience emotional and financial hardships if the Applicant returns to India and they are separated. Specifically, she states that she cannot live without the Applicant and that she relies upon the Applicant's income to meet their basic expenses.

The Applicant's spouse asserts she will suffer substantial emotional hardship if she becomes indefinitely separated from the Applicant, given her separation from her father at a young age. She explains that she was separated from her father for many years after he immigrated to the United States and as a result, she grew up without a father figure. She states that their 14-year separation had a deep and adverse impact on her self-esteem.

The Applicant's spouse states she, the Applicant, and their infant son moved in with her parents and brother in 2010, after she experienced difficulty trying to work and care for their son, given her severe postpartum depression. For this reason the Applicant and his spouse left their son with the Applicant's parents in India temporarily. The record includes evidence of an itinerary for the Applicant's spouse to travel to India in January 2015 and to return in late April 2015; another itinerary for their son reflects a one-way flight from India to the United States on the same date as the Applicant's spouse's return.

To support his spouse's claims of emotional hardship, the record contains a psychological evaluation of the Applicant's spouse dated July 10, 2013. The psychologist notes that, according to the Applicant's spouse, she suffered from severe postpartum depression. The psychologist states that the Applicant's spouse has developed symptoms of recurrent, severe major depression without psychotic features and generalized anxiety disorder of moderate intensity. According to the evaluation, the Applicant's spouse's psychological conditions are manifested in nightmares, insomnia, and headaches, among other physical responses. The psychologist suggests that the Applicant's spouse manage her conditions with "brief or extended therapeutic methods." She concludes that the Applicant's spouse is sensitive to separating from either her father or the Applicant and that the Applicant's "unsettled immigration status" is the "main stressor" exacerbating his spouse's emotional state.

In addition, the Applicant's spouse asserts that staying in the United States without the Applicant would cause her financial hardship. She says that she and the Applicant pay \$1000 per month to her parents for their share of rent and utilities. She is concerned that she would be unable to pay for her share of rent and utilities without the Applicant's contribution. She is also concerned that given the Applicant's lack of education, he is unlikely to find a job in India, so she would have to financially support him from the United States. Moreover, because she intends to bring their son home soon, she may need to find child care, which is expensive in New York.

The most recent income-related documentation in the record is the couple's 2012 Form 1040, Individual Income Tax Return, showing that the Applicant and his spouse earned \$22,000 that year. The record is silent as to how much each individual earned in 2012. The documentation includes the

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Applicant's spouse's 2011 Form 1040A and the corresponding W-2 form showing that the Applicant's spouse earned \$6800 in 2011. The Applicant provides an article showing that the average annual cost of infant care in New York is \$15,000. She further states that the cost of long distance communication and travel are prohibitively high. According to a copy of her itinerary to India, roundtrip airfare between New York and India is approximately \$750. The Applicant submits a lease for the apartment they share with the Applicant's spouse's parents and brother, signed by his father-in-law, reflecting rent of \$1315.

While the record reflects the Applicant's financial difficulties, it lacks evidence of his assets and his liabilities, which would permit determining the severity of his spouse's financial hardship. Moreover, the record also lacks evidence of employment and labor conditions in India, to support concerns that the Applicant may be unable to support himself or his spouse and child. 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)).

The record reflects that the Applicant's spouse likely would experience some emotional and financial hardship, were she to remain in the United States without the Applicant. However, the record contains insufficient corroborative evidence of emotional, financial, medical, or other types of hardship that, considered in the aggregate, establishes that the Applicant's spouse's hardship could be considered extreme hardship. As a result we cannot determine that the Applicant has met his burden to show that his spouse would suffer extreme hardship if she were to remain in the United States with her family in the event he is removed. The Applicant bears the burden of proof in these proceedings, and he has not met his burden of establishing that his spouse would suffer extreme hardship were she to be separated from him. Section 291 of the Act, 8 U.S.C. § 1361.

With respect to the hardship she would experience if she were to relocate to India, the record reflects that the Applicant and his spouse are both natives of the state of ████████ in India. The Applicant's spouse states that she has lived in the United States for more than eight years and that she lives with her parents and brother. The record shows that the Applicant's spouse told the psychologist she was concerned about being separated from her family and social network here, and she also stated that she has no close relatives in India.

The Applicant's spouse also expresses concern about losing healthcare insurance in India. No documentation in the record supports these assertions or shows that the Applicant or his spouse would not be able to afford healthcare in India.

In addition, the Applicant's spouse states that she does not know if she can support herself in India or if the Applicant will find employment. While the Applicant's spouse's concerns about employment prospects in India are relevant, as noted above, the Applicant has not provided evidence to support assertions that finding employment would be difficult either for himself or his spouse.

The Applicant's spouse also states that she is concerned about the level of crime in India and about how women are treated there. The Applicant states that crime has been increasing in India. To support these assertions, the Applicant submits a 2013 U.S. Department of State travel warning, which states that India continues to experience terrorist and insurgent activities that may affect U.S. citizens directly or indirectly and that religious violence occasionally occurs. The report also mentions that Western women continue to report incidents of verbal and physical harassment. The Applicant's spouse states that she enjoys the freedom of being an independent woman in the United States but worries about the traditional role she may be forced into if she returned to India. The Applicant submits a report describing several traditional practices that are harmful to Indian women, such as dowry disputes and honor killings.

The record reflects that if she were to relocate to India, the Applicant's spouse likely would experience a degree of emotional hardship due to separation from her parents and brother and related to the treatment of women in India. The record does not include evidence, however, showing that her family could not accompany or visit her, or that the Applicant and his spouse would live in a community in which women are mistreated. Moreover, the Applicant's claims of medical and financial hardship are uncorroborated. The Applicant, therefore, has not provided sufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that his spouse would experience extreme hardship upon relocation to India.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship as required under section 212(i) of the Act. As the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of 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 appeal is dismissed.

Cite as *Matter of T-C-P-*, ID# 12799 (AAO Sept. 28, 2015)