



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

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

MATTER OF M-P-P-

DATE: JAN. 19, 2016

APPEAL OF ATLANTA 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, Atlanta, Georgia denied the application. The matter is now before us on appeal. The appeal will be sustained.

In a decision, dated December 12, 2014, the Director found that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States by fraud or a material misrepresentation. The Director found that the Applicant had not demonstrated that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, the Applicant states that the Director provided an incomplete hardship analysis. She states that the Director erred in not finding extreme hardship to her U.S. citizen spouse and in denying her Form I-601. She states that her spouse's family and financial ties to the United States should be taken into consideration, as well as their lack of prospects in India.

The record includes, but is not limited to: a copy of the marriage certificate of the Applicant and her spouse; affidavits from the Applicant; an affidavit from the Applicant's spouse; letters from the couple's son; documents from the children's school; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Human Rights Report for India and other country conditions information; and copies of photographs of the Applicant and her family. The Applicant's record also contains a previously filed Form I-601, appeal, and AAO decision. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 to the United States in June 2001 by presenting a passport and visa that were issued to another person. Therefore, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure admission to the United States. The Applicant does not contest her inadmissibility on appeal.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's U.S. citizen spouse. Hardship to an applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The record establishes that the Applicant's spouse will suffer extreme hardship as a result of relocating to India. The Applicant's spouse states that he and the Applicant have two sons, ages 9 and 13 years old. The record reflects that they were born and raised in the United States. The Applicant's spouse states he cannot imagine returning to India because his children would not have

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good schooling and although they speak the language, they do not write it. The record includes educational records for the Applicant's children. The Applicant's older child discusses his social and educational ties to the United States, and his and his brother's involvement in American sports.

The record shows that the Applicant's spouse has owned a convenience store since December 2003. He states that he works from 7 A.M. to 9 P.M., seven days a week and relies on the Applicant to do all of the caretaking for their children. In addition, the Applicant's spouse contends that he has lived in the United States since 1998 and that his four siblings also live in the United States. According to the Applicant's spouse, his mother is a lawful permanent resident, but returned to India and he sends her money to support herself.

The Applicant states that her spouse is extremely concerned about her well-being in India. The Applicant has submitted documents addressing country conditions in India regarding the threat of crime and violence against women in India. The U.S. Department of State, Country Specific Information for India describes a threat from Anti-Western terrorist groups and insurgencies which may affect U.S. citizens directly or indirectly.

The record reflects that the Applicant's spouse has strong financial and familial ties in the United States. In addition, he would experience hardship due to the hardship his children would experience in India, as they are integrated into the American lifestyle and educational system. We also acknowledge the country conditions in India, including general safety issues and issues for women. When considering these hardship factors, and the normal results of relocation, we find that the record establishes that the Applicant's spouse would suffer extreme hardship upon relocation.

In addition, the record shows that the Applicant's spouse will suffer extreme hardship as a result of separation. The record indicates through statements and a mental health evaluation that the Applicant is their children's primary caretaker. The record indicates that she prepares them for school, helps with their homework, and drives them to afterschool activities and back home. The Applicant's spouse states that three of his four siblings live in [REDACTED] and the other is near him but works all of the time and is married with two children. As such, the record does not indicate that they would be willing or able to help him with his children in the absence of the Applicant. The Applicant states that it would cost a significant portion of her spouse's income to watch the children. The Applicant's spouse expresses concern over his business closing as a result of the Applicant's departure. He states that the family would be financially devastated as a result.

Moreover, the mental health evaluation, performed on December 10, 2013 and December 17, 2013, shows that the Applicant's spouse suffers from moderate to severe symptoms of depression and anxiety as a result of the Applicant's immigration situation. Specifically, the Applicant's spouse states that he suffers from: depressed mood, sleep disturbance, poor concentration and memory, mood swings, stress, social isolation, guilt, hyperactivity, somatic complaint, and appetite disturbance. The evaluation states that these symptoms are interfering with his daily functioning and he suffers from a clinically significant level of anxiety. Finally, the articles regarding the treatment of women in India support the Applicant's spouse's concern for the Applicant's wellbeing if she

were to return to India without him. Therefore, given the support the Applicant provides to her spouse in regards to childcare, allowing him to focus on the family business; the mental health symptoms he is suffering as a result of the Applicant's immigration situation; and the conditions in India for a woman on her own, we find that the Applicant's spouse will suffer extreme hardship as a result of separation from the Applicant. Thus, the record establishes that the Applicant's spouse will suffer extreme hardship as a result of the Applicant's inadmissibility.

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "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). In evaluating whether to favorably exercise 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, recency 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).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The unfavorable factors in the Applicant's case include her misrepresentation and her unlawful residence in the United States. The favorable factors in the Applicant's case include: the extreme hardship her spouse would face if she were not granted a waiver of inadmissibility; hardship to her children; the support she provides for her family; statements reflecting her good moral character; and the lack of any criminal record. Thus, the favorable factors in the Applicant's case outweigh the unfavorable such that a favorable exercise of discretion is warranted.

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The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of M-P-P-*, ID# 14617 (AAO Jan. 19, 2016)