

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



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



H6

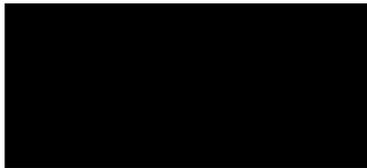
DATE: **NOV 14 2011** OFFICE: GARDEN CITY, NEW YORK

File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 13, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship of an emotional, familial, and economic nature if the applicant's waiver is denied. See *Counsel's Brief*, dated May 13, 2009.

The record contains but is not limited to: Form I-290B; applicant's wife's hardship affidavit, psychological evaluation, and employment verification letter; personal photos; and a country report on India; Forms I-601, I-485, I-130, and denials for each; applicant's marriage and divorce records; advanced parole records; various financial records; and a sworn statement concerning the applicant's U.S. entry with a fraudulent passport. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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 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 Attorney General 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 Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection sometime prior to April 1, 1997. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until the filing of his first Form I-485 on April 30, 2001. The applicant was granted advance parole on January 18, 2002 and departed the U.S. sometime thereafter, triggering inadmissibility. On April 22, 2002, the applicant entered the United States to pursue adjustment on Form I-485. Similarly, the applicant was later granted advance parole on September 9, 2005, departed sometime thereafter, and re-entered the United States on January 15, 2006.¹ The applicant has thus accumulated more than 365 days of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest these findings on appeal.²

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 children can be considered only insofar as it results in hardship to the qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and 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-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

¹ The District Director incorrectly noted that the applicant entered the U.S. on advanced parole on November 5, 2006. See *Decision of the District Director*, dated April 13, 2009. While the error is harmless, the AAO acknowledges it and notes that the actual/correct date of entry was January 15, 2006.

² The applicant was convicted on April 11, 2005 for Tampering with Public Records in the Second Degree pursuant to section 175.20 of the New York Penal code. N.Y., Pen Law §175.20. The District Director did not address whether this conviction constitutes a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO notes that, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I). Further, the AAO notes that the applicant's conviction would be subject to the "petty offense exception" at section 212(a)(2)(A)(ii) of the INA as the maximum possible penalty for the crime of which he was convicted did not exceed one year and the applicant was not sentenced to a prison term in excess of six months.

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*, 138 F.3d at 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 this case, the record reflects that the applicant's wife is a 29-year-old native of India and naturalized citizen of the United States. She states that she met the applicant more than three years ago and that the "past nine months or so," have "been one of the happiest periods..." See *Hardship Affidavit*, dated January 19, 2008. The applicant's wife refers several times to her "future children," whom she hopes to have one day with the "terrific and caring father" she believes that her husband will be. *Id.* She states that it "was literally love at first sight," that she is deeply in love with her husband and he treats her well and with great respect. *Id.* The applicant's wife states that she asked God on their wedding day, "to bless [REDACTED] for me and continue to bless him in all his endeavors, including his immigration problems." *Id.* She states that the applicant, "in addition to being an emotional crutch" on whom she can depend, has also been there for her financially, and "has been there for me in every way possible." *Id.* She states that her husband has been an excellent son-in-law to her mother also, though she does not elaborate. *Id.*

With regard to emotional hardship related to separation, the applicant's wife states that she cannot live without her husband and that that her relatives in the U.S. cannot provide her with the emotional support that she needs from him. *Id.* The applicant's wife states that at times she finds it difficult to sleep due to fear that her husband may be forced to depart from the U.S. *Id.* She states that her appetite is poor and she often finds it difficult to focus and concentrate. *Id.* In support, the applicant submits *Psychological Evaluation*, dated January 22, 2008, from [REDACTED]. [REDACTED] states that his report "is based on one interview" conducted the previous day. *Id.* According to [REDACTED] the applicant's wife reports that she is deeply saddened that her husband may be deported, that in his absence "she would be lost in despair, would not know what to do or how to live and fears that she might be helpless," that they deeply fear being separated from one another, and speak numerous times during the day to get feedback, love, and input from one another. *Id.* [REDACTED] asserts that the applicant's wife "says that she needs [REDACTED] to assume responsibility for major areas of her life and deeply fears the loss of his support and approval," that she has difficulty initiating projects on her own due to a lack of self-confidence, and goes to "excessive lengths to attain nurturance and support from her husband." *Id.* [REDACTED] provides no explanations or examples concerning the major areas, projects, or excessive lengths to which he refers and no evidence has been submitted to supplement the record in this regard. [REDACTED] asserts that the applicant believes his wife would be unable "to cope for herself or her family in any meaningful way if alone," and that both parties report that separation-related worries have "caused them anxiety and sadness and reflects their inability to function in a healthy manner in each other's absence." *Id.*

[REDACTED] asserts that based on his interview with the applicant and his wife, the latter's presentation is consistent with Adjustment Disorder with Mixed Anxiety and Depressed Mood R/O Major Depressive Disorder. See *Psychological Evaluation*, dated January 22, 2008. [REDACTED] asserts that in the applicant's absence his wife "would be totally unable to cope," (*id.*), but does not elaborate or note any referral or recommendation that she seek further evaluation or treatment of any kind. [REDACTED] asserts that the applicant "provides essential and irreplaceable

physical, emotional, financial, and instrumental care and love for his wife,” and that the family would be devastated if the applicant is deported “as they are dependent on him.” *Id.* He does not elaborate with regard to the “family” to whom he refers or the “dependence” of these individuals on the applicant. The AAO acknowledges [REDACTED] evaluation and professional opinion and recognizes that difficulties may be faced by the applicant’s spouse. The difficulties described, however, do not take this case beyond those hardships ordinarily associated with the inadmissibility of a family member, and the evidence is insufficient to support a finding of extreme emotional hardship related to separation.

With regard to economic hardship related to separation, the applicant’s wife states that her husband “has been there” for her financially, has provided a comfortable home, and works hard to ensure they are both comfortable and have all the essentials they need to enjoy a good quality of life. See *Hardship Affidavit*, dated January 19, 2008. [REDACTED] asserts that if the applicant is deported, his wife “will experience financial hardships, as she depends on him for about half of their basic necessities.” See *Psychological Evaluation*, dated January 22, 2008. He adds that “the cost of flying back and forth between India and New York would be prohibitively expensive and logistically difficult and unrealistic.” *Id.* The AAO notes that [REDACTED] evaluation and the applicant’s wife’s affidavit are both dated less than three months after the applicant and his spouse were married. See *Marriage Certificate*, dated October 25, 2007. No evidence has been submitted that shows that the applicant’s spouse would be unable to support herself financially in the event of her husband’s removal. On the couple’s first joint tax return, it appears that the applicant’s wife’s income was \$18,797, and the applicant’s \$6,857. See *2007 Joint Tax Return*. Forms W-2, Wage and Tax Statement, for 2007 have not been submitted. In 2006, the applicant’s wife earned \$21,339 while the applicant earned \$6,856. See *2006 Individual Tax Returns and Wife’s Forms W-2*. Counsel asserts on appeal that the applicant and his wife “make just over \$25,000 per year,” but that the applicant’s wife “on her own only makes half of their income, approximately \$12,500. See *Counsel’s Brief*, dated May 13, 2009. The evidence in the record is insufficient to support counsel’s assertion. While a letter from [REDACTED] notes that the applicant’s wife was hired on October 7, 2007 at an hourly rate of \$7.75, the letter does not state the number of hours she works during any particular period. See *Employment Letter*, dated November 15, 2007. The AAO notes that though Form I-290B was filed more than a year after Form I-601, no new evidence was submitted therewith. Without evidence such as a 2008 tax return(s) and W-2 forms, other letters of employment or evidence that the applicant’s wife is not otherwise employed, the AAO is unable to find that the applicant’s wife’s income has declined and the applicant’s risen so substantially. Further, no budget has been submitted to demonstrate the couple’s expenses relative to their income. The only expense evidence in the record is a joint checking account statement and copies of various checks, three monthly bills from [REDACTED] totaling less than \$80, and a letter from Verizon welcoming the applicant and his wife to their telephone service. See *Statements*, various dates between October 2007 and January 2008. Accordingly, the evidence in the record is insufficient to demonstrate extreme economic hardship related to separation.

Counsel asserts that the applicant and his wife have been unable to conceive a child, and that the latter is “currently receiving fertility treatment that is unavailable or financially unattainable in India.” See *Counsel’s Brief*, dated May 13, 2009. [REDACTED] asserts that the applicant’s wife “is

grateful for the medical care she has received concerning her fertility and gynecological issues,” and that “she feels that such care would simply not have been available in India.” *Id.* No details are provided concerning the “fertility and gynecological issues” suffered by the applicant or the “care” she has received/is currently receiving, and no evidence has been submitted that shows that she suffers from any medical condition(s) or has undergone any treatment in this regard. The applicant’s wife states that if her husband is removed, “it will not be easy for us to have children together, as traveling back and forth to India will be economically expensive for me.” See *Hardship Affidavit*, dated January 19, 2008. Her affidavit is silent on the issue of fertility. *Id.* Without evidence such as medical diagnosis and treatment records, the AAO cannot find hardship of a medical nature. And without evidence that fertility and gynecological care is unavailable or unaffordable in India, the AAO is unable to find such hardship related to relocation.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, [REDACTED] asserts that the applicant’s wife is very close to her mother, and to her brother in Michigan. See *Psychological Evaluation*, dated January 22, 2008. He adds that as the only daughter, it is her strong obligation to care for her mother and that it would be a “heartbreaking decision” to choose between separation from her husband or leaving her mother in the U.S. “almost alone.” *Id.* [REDACTED] does not address whether the applicant’s wife’s brother would be willing or able to care for their mother in the event his sister chooses to relocate to India. [REDACTED] asserts that after the death of the applicant’s wife’s father in 1995, “her mother and family suffered extreme hardships, economically and otherwise.” *Id.* [REDACTED] asserts that the applicant’s wife first married in 1999 at age 17, but that love and trust were absent in that marriage. *Id.* He asserts that in light of these losses and hardships, the applicant’s wife has found a rare second chance at happiness and love with the applicant. *Id.* The AAO recognizes that the decision to relocate can be difficult. The difficulties described, however, do not take this case beyond those hardships ordinarily associated with the inadmissibility of a family member.

[REDACTED] asserts that the applicant’s wife has spoken to her husband about “possibly continuing her education or beginning a business that she could manage” with him, and that they have a “dream of opening their own food franchise, though this would be impossible if [REDACTED] is deported...” *Psychological Evaluation*, dated January 22, 2008. The AAO will not speculate as to whether the applicant’s wife would continue her education or start a business or food franchise with her husband if his waiver is granted. Counsel asserts that the applicant “experienced extreme poverty in India as a child, growing up in an agricultural household, and would be relegated to return to the same impoverished state if forced to return...” See *Counsel’s Brief*, dated May 13, 2009. In support, the applicant submits the U.S. State Department’s *Background Note: India*, dated January 2009. Though counsel points to some economic growth restraints in India, the report shows that for the same period: “Real GDP growth for the fiscal year ending March 31, 2007 was 9.4%, up from 9.0% growth in the previous year.” *Id.* While the AAO acknowledges

that the applicant's spouse may experience some difficulties as a result of relocation to India, the applicant has failed to establish that such difficulties would be uncommon or extreme.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.