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



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

[REDACTED]

H6

DATE: APR 30 2012

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of India, who was admitted into the United States on July 18, 1990 with a visitor visa valid through October 25, 1991. The applicant remained in the United States until January 2000, when she departed the country. She returned a few days later and has remained in the country since that time. The applicant was found to be inadmissible 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 for more than one year and seeking readmission within 10 years of her departure from the United States. The applicant is the daughter of a naturalized U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v) in order to live in the United States with her mother.

In a decision dated December 2, 2009, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence establishes her U.S. citizen mother will experience extreme emotional and financial hardship if she is denied admission into the United States. To support these assertions counsel submits hardship letters from family members; financial, medical and psychological evidence; India country conditions evidence; and letters attesting to the applicant's good character. The entire record was reviewed and considered in rendering a decision on the appeal

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

(i) [A]ny 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects the applicant was admitted into the United States on July 18, 1990, with a visitor visa valid through October 25, 1991. The applicant remained in the United States until January 2000, at which time she departed. She returned a few days later, and has remained in the country since that time.

Accrual of unlawful presence stops on the date that an adjustment of status application is properly filed. The accrual of unlawful presence begins again after an adjustment of status application is denied. *See, USCIS Memorandum, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009. In the present case, the applicant filed a Form I-485, adjustment of status application on September 18, 2000. The adjustment of status application is pending and has not yet been denied. Accordingly, the applicant was unlawfully present in the United States for over a year from April 1, 1997, when section 212(a)(9)(B) of the Act went into effect, until January 2000.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant has not been outside of the United States for ten years since the date of her departure. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 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*, 22 I&N Dec. 560, 565 (BIA 1999), 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. 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 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).

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., 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.

The applicant's U.S. citizen mother is her qualifying relative under section 212(a)(9)(B)(v) of the Act.

Letters written by the applicant, her mother, and her brother indicate the applicant's mother has extensive family ties in the United States and that she left India with her two children in 1990 to escape a verbally and physically abusive marriage. The applicant assists her mother emotionally, financially and with health insurance coverage. The applicant's mother takes medication for chronic depression and migraine attacks. Additionally, as confirmed by federal tax returns and other documents, the applicant and her mother operate a business together, with the applicant's mother's role in the business being a supportive one; the applicant runs the business. The proceeds from the business financially support the applicant, her mother and her grandmother, who lives with them, and the applicant's mother states that without the applicant's leadership, the business would fail, she would be unable to support herself, and she would lose their home. The applicant's maternal grandmother states she lives with the applicant and her mother, that they take care of her physically and financially, and that due to her age and health conditions, she would be unable to travel to India. The applicant's mother states it depresses her to think about the applicant living in India without her family; the applicant no longer has family there; and the applicant does not speak, read or write Hindi at a level that would allow her to communicate or find a decent job in India. The applicant's mother also worries her ex-husband would harm the applicant to retaliate against her in India.

Several letters commend the applicant for her active community involvement and service and attest to her good moral character.

A letter from the applicant's mother's doctor of over eighteen years states that the applicant's mother suffers from severe arthritis, polymyalgia, insomnia and periods of memory lapse. The letter states further that due to her abusive marriage and traumatic divorce, the applicant's mother "has a history of long standing depression and at times bouts of depression that have caused suicidal tendencies and severe anxiety." The letter reflects the applicant's mother "has been on anti-depressant and anti-anxiety medication for all these years" and that "she is unable to function without medication and close supportive care of her family mainly [the applicant.]"

A psychological evaluation additionally reflects the applicant's mother takes an anti-anxiety medication, and the licensed social worker concludes that the applicant's mother "is severely depressed" by the applicant's immigration situation. The evaluation indicates that the applicant's mother feels she is to blame for the applicant's current immigration situation, and that she has verbalized suicidal thoughts if the applicant is removed from the country.

The record contains news articles discussing health conditions and conditions for women in India. Current Department of State country-conditions information indicates that women are cautioned not to travel alone in India, incidents of verbal and physical harassment by groups of men have been reported, and "women should observe stringent security precautions [and avoid] isolated areas when alone." See http://travel.state.gov/ravel/cis_pa_tw/cis/cis_1139.html.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's mother would experience hardship that rises beyond the common

results of removal or inadmissibility if the applicant were denied admission into the United States, and she remained in the United States separated from the applicant. The evidence reflects the applicant is the primary operator of the business she and her mother own and that the applicant's mother relies financially on income from the business. The applicant's mother has several medical problems, and the applicant helps provide care for her in the United States. In addition, the applicant's mother is presently diagnosed with severe depression due to the applicant's immigration situation, and she has a history of depression and anxiety that has resulted in suicidal tendencies and requires her to take anti-depressant and anti-anxiety medication. The AAO finds that these factors, when considered in the aggregate, establish that the hardship the applicant's mother would suffer if she remains in the United States separated from the applicant, goes beyond the common results of inadmissibility, and rises to the level of extreme hardship.

The cumulative evidence establishes the applicant's mother would also experience emotional and financial hardship beyond that normally experienced upon removal or inadmissibility, if she relocated to India to be with the applicant. The applicant's mother would be unable to continue caring for her elderly mother in the United States. Evidence reflects the applicant's mother left India over 20 years ago and escaped an abusive marriage, and she has a history of depression and severe anxiety related to her life in India. In addition, the applicant's mother has no family in India, no place to live, and would face numerous obstacles and serious challenges as a single woman living alone with her daughter in India. The AAO finds that these factors, when considered in the aggregate, establish that the hardship the applicant's mother would suffer if she relocated with her daughter to India go beyond the common results of inadmissibility, and rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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 approval of the applicant's waiver is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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). The AAO must:

[B]alance 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 unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States. The favorable factors are the hardship the applicant's mother and family would face if the applicant is denied admission into the United States; her good moral character as outlined in affidavits from friends, members of the community and family members; and the applicant's lack of a criminal record.

The AAO finds that although the immigration violation committed by the applicant is serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen mother, as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. Accordingly, the Form I-601 appeal will be sustained.

ORDER: The appeal is sustained.