

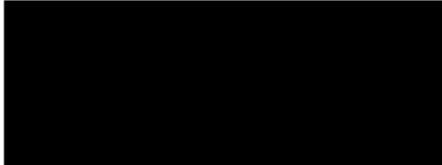
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: **AUG 06 2012**

OFFICE: SAN FRANCISCO, CA

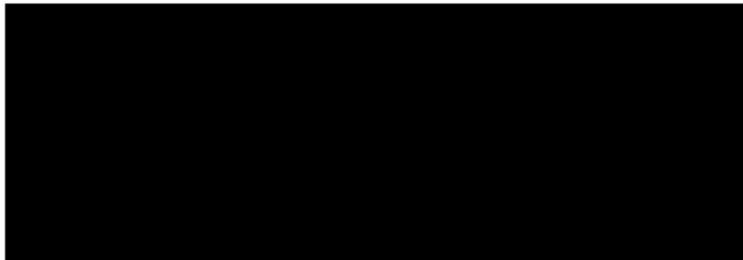


IN RE:



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

ON BEHALF OF APPLICANT:

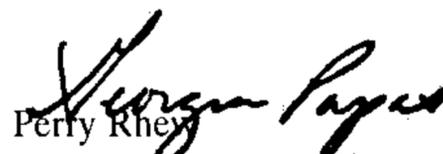


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhee
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, San Francisco, California, and the matter 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission and a benefit provided under the Act through willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his spouse and family.

In a decision dated May 27, 2010, the director concluded the applicant had failed to establish that his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Counsel asserts on appeal that the director abused her discretion and erred in not finding extreme hardship in the applicant's case, and that the cumulative evidence establishes the applicant's wife will experience extreme emotional and financial hardship if the applicant is denied admission into the country. To support these assertions, counsel submits letters from the applicant's wife, friends and employers; financial documents; medical evidence; and country-conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

It is noted that the applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered excluded and removed at the end of proceedings initiated upon his arrival, and seeking admission within ten years of departure or removal.¹ A Form I-601 waiver of inadmissibility does not correspond to this ground of inadmissibility. Rather, the applicant must request permission to reapply for admission into the United States by filing Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The record does not include this application or evidence that it was filed.

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

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 on December 25, 1993, the applicant arrived without travel documents at the JFK International Airport in New York and misrepresented that he was another individual.

¹ The applicant was ordered excluded and removed *in absentia* on March 10, 1994. He has not departed the United States.

██████████ a citizen of India. He requested asylum at the airport and was paroled into the country pending exclusion proceedings. He then filed an asylum application at the San Francisco, California asylum office on February 24, 1994, using the name ██████████. He did not appear at his exclusion proceedings and was ordered excluded and deported on March 10, 1994. The applicant misrepresented his manner and place of entry on his asylum application and during his asylum interview, stating that he entered without inspection through Blaine, Washington. He also failed to disclose his use of the name ██████████ and that he was placed into exclusion proceedings in New York upon his arrival. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking to procure admission and a benefit under the Act by willfully misrepresenting material facts.² Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

The [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.

Section 212(i) 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 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 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.

² The applicant was granted asylum status on November 29, 1994; however, it was rescinded on May 20, 1999, due to lack of jurisdiction under 8 C.F.R. § 208.2.

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).

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.

The applicant's U.S. citizen spouse is his qualifying relative under section 212(i) of the Act.

The applicant's wife, a native of India, states that she and the applicant have been married since 2002 and they have a U.S. citizen child, born in May 2009. She and the applicant have a close and loving relationship, she depends on him emotionally and financially, and she would be devastated if he had to return to India. She married the applicant without her family's consent, her parents and siblings have refused to speak or meet with her since that time, and the applicant is the only

person who cares for her and their daughter. Prior to their daughter's birth, the applicant's wife worked 32 hours a week as a certified nursing assistant, while the applicant worked full-time as a courier. After their daughter's birth, the applicant's wife stopped working in order to care for her. She indicates she would be unable to maintain her standard of living and support their family if the applicant moved to India, and she would give up her dream of buying a house. The applicant's wife states she had six miscarriages prior to the birth of their daughter, she suffers from diabetes, and the applicant helps her test her blood and maintain a proper diet; he also provides moral support that allows her to "deal with [her] illness and [her] multiple miscarriages." She would be unable to join the applicant in India because she has lived in the United States for many years, is very close to her family, and could not imagine being separated from them.

A friend, in a letter, attests to hardships the applicant's wife suffered due to abandonment by her family, her inability to conceive a child, her development of diabetes, and her constant worrying about the applicant's immigration situation. The friend also describes the close relationship between the applicant and his wife and states the applicant takes care of their daughter when his wife is at work.

A psychological assessment discusses the applicant's wife's lack of family support, her depression and need for counseling after suffering six miscarriages and developing diabetes, her current financial reliance on the applicant, and her emotional and physical reliance on the applicant to care for their daughter when she is too ill to do so. The applicant's wife is diagnosed with generalized anxiety disorder and major depressive disorder based on reported symptoms of worries and tearfulness about the applicant's immigration situation, fatigue and lack of sleep, lack of enjoyment in previously enjoyed activities, and feelings that she has no control over her situation and is "going crazy."

The record contains utility bills, bank statements, and federal income tax forms. Employment documents confirm the applicant earned over \$50,000 in 2007 and 2008, and the applicant's wife earned \$48,471 in 2008 as a nursing assistant.

Medical evidence reflects the applicant's wife was diagnosed with and prescribed medication for diabetes, hyperlipidemia and obesity; that she suffered six miscarriages between 2004 and 2009, causing her to experience sadness, fear, insomnia and poor appetite; therapy was recommended.

In addition, the record includes a report showing that India has a diverse economy with economic growth in the services and information-technology industries. The report states that India also faces challenges, including widespread poverty and limited employment opportunities.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. The applicant's wife has been diagnosed with generalized anxiety disorder and major depressive disorder. The value of the conclusions reached in the psychological assessment are diminished, however, in that there is no indication that the evaluator independently verified the information provided, and the record lacks evidence to corroborate key

information used in making the diagnoses. No evidence corroborates the claim that the applicant's wife received counseling for depression. The record fails to reflect an ongoing patient-doctor relationship between the evaluator and the applicant's wife or a treatment plan for the conditions noted in the evaluation, to support the gravity of the applicant's wife's situation. The record also lacks evidence corroborating counsel's claim that the applicant's wife is not covered by health insurance and that she would be unable to pay for counseling or therapy. Evidence in the record shows that the applicant's wife and family have health insurance. The record also lacks evidence corroborating claims that the applicant's wife has been unable to care for herself or their daughter due to illness, or that she does not work and is financially dependent upon the applicant. The record reflects the applicant's wife began working as a nursing assistant at a rehabilitation center in October 2003, and although she states that she stays home caring for their daughter, the psychological assessment reflects she plans to work once their baby is old enough to enter daycare. Additionally, a friend states the applicant cares for their daughter when his wife is at work. Furthermore, although medical evidence reflects the applicant's wife currently suffers from diabetes, the evidence fails to establish that she relies on the applicant to manage her health conditions, or that her health would be negatively affected if the applicant were not present. The cumulative evidence thus fails to establish that the applicant's wife would experience emotional, financial or physical hardships that are outside the ordinary consequences of removal or inadmissibility if she remained in the United States.

The cumulative evidence also fails to establish that the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if she moved to India to be with the applicant. The evidence indicates the applicant's wife came to the United States with her siblings over fifteen years ago, at the age of seventeen; however, she has been estranged from her family for over seven years. The applicant thus failed to demonstrate that his wife would sever close family ties in the United States if she moved to India, and the record lacks evidence establishing the applicant's wife has developed other close ties in the United States that would cause her to suffer hardship beyond that normally experienced upon removal or inadmissibility, if she moved to India with the applicant. The record contains no evidence establishing that the applicant's wife would be unable to receive medical treatment in India. In addition, the record reflects that the applicant's wife is a native of India, and she is thus familiar with the culture and lifestyle there. Country-conditions evidence also fails to establish the applicant's wife would experience extreme financial or other hardship in India.

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.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.