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

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 0 9 2012 Office: NEW DELHI, INDIA FILE: [redacted]

IN RE: [redacted]

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:

[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.

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 Rhew
Chief, Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India 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 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 having sought admission to the United States through fraud or misrepresentation. The applicant's father is a U.S. citizen and his mother is a legal permanent resident of the United States. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his parents.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated June 15, 2010. The director also denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, the same day. The AAO notes that the applicant had remained outside of the United States for five years after his April 2000 expedited removal, and therefore, was not required to submit a Form I-212.

On appeal, the applicant, through counsel, seeks forgiveness and asserts that his U.S. citizen father is experiencing financial hardship related to the applicant's inadmissibility. Specifically, in addition to the hardship factors presented with his waiver application, the applicant claims his father must sell the property the applicant occupies in India to help his family in the United States. *See Form I-290B, Notice of Appeal or Motion*, received on July 14, 2010.

The evidence of record includes, but is not limited to: counsel's brief, statements from the applicant and his father, medical documents concerning the applicant and his mother, identification and relationship documents, financial documents, and an employment letter for the applicant's father. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

> (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 on April 9, 2000, the applicant attempted to enter the United States with a fraudulent B1/B2 nonimmigrant visa and was removed expeditiously from the United States two days later. The applicant states that he previously had applied twice for a nonimmigrant visa through the U.S. Embassy in New Delhi and was denied. On his waiver application, the

applicant indicated that when he was in Malaysia on vacation, he was approached by a friend who offered to arrange his travel to the United States and then returned his passport with a U.S. visa in it. He states that he "did not know the visa stamp was not right." After being apprehended at the Newark International Airport on April 9, 2000, the applicant stated in a sworn statement that his uncle obtained the visa from Palau, and he paid 1000 rupees for "the company papers, but [he] did not pay for the visa." According to the applicant, his uncle met him in Bangkok and asked him if he wanted a U.S. visa. Although the applicant claims that he did not know the visa was counterfeit, his inconsistent statements about how he obtained the visa raise questions about his credibility and his assertion about his lack of knowledge that the visa was counterfeit. The applicant fails to explain his inconsistent statements.

Counsel asserts that willful misrepresentation "would necessarily include both knowledge of falsity and intent to deceive," and the applicant lacked both knowledge of the falsity and an intent to deceive. We note that intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 290 (BIA 1975). Furthermore, the applicant submitted no corroborating evidence, such as an affidavit from the person who obtained the fraudulent visa that it was obtained without the knowledge of the applicant that it was counterfeit. The assertions of the applicant are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient to meet his burden of proof. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Therefore, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to obtain admission to the United States through fraud or the willful misrepresentation of a material fact.

Section 212(i) of the Act provides:

> (1) 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. *See Matter of Mendez*, 21

I&N Dec. 296 (BIA 1996). The applicant's qualifying relatives are his father, who is a U.S. citizen and his mother, who is a lawful permanent resident of the United States.

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 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.

The AAO now turns to the question of whether the applicant in the present case has established that his qualifying relatives would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the denial of the applicant's waiver application would cause extreme mental, emotional, financial, and personal hardship to his parents. Counsel states that the applicant's father works at a gas station and does odd jobs on the side. He is financially responsible for his two youngest children who are in the United States. Counsel states that the applicant resides in a house in India that is owned by his father; the applicant's father would like to sell it to buy a house in the United States, but he is unable to do so while the applicant lives in it. Counsel asserts that the house in India is worth about $120,000. Counsel further states that the applicant has "completely recovered" from a serious illness and would be able to assist his father "in looking after his family."

The applicant's father states that he is the primary source of financial support for his family. He pays for his daughter's college education. He and his wife are unable to make frequent visits to India because of the cost of air fares. The applicant's mother has asthma, which worsens every time she visits India. The applicant lives alone in India and his mother went there to take care of him when he was ill. He also states that he cannot move back to India, because he would be separated from five members of his immediate family in the United States and he also would not be able to help his daughter by paying for her college education.

Financial documents in the record indicate that the applicant's father works full-time as a gas attendant and earns $500 per week. The record also indicates that the applicant's father owns a cleaning services business that generated $2,000 in 2009 and $12,500 in 2008.

A 2010 letter from [redacted] indicates that the applicant's mother has asthma, osteoarthritis, hypertension and depression and is unable to travel. The record also contains copies of medical records and billing information for the medical care that the applicant received in India in 2010 for an unspecified illness.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his parents resulting from their separation from the applicant. The record does not support counsel's

assertions of extreme financial and emotional hardship to the applicant's parents. The record lacks evidence demonstrating the family's household expenses, the applicant's father's financial contribution towards his daughter's college tuition, and his financial support for the applicant. Furthermore, the record does not demonstrate the applicant is unable to obtain employment in India and therefore financially depends on his father. Without documentary evidence of the family's household expenses in the United States and India, the AAO is unable to determine whether the applicant's father is experiencing financial hardship resulting from their separation. The assertions of counsel and the applicant's father are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding the emotional hardship of the applicant's parents, the AAO acknowledges that his parents would experience hardship resulting from their separation from the applicant, however, we note it is a common result of deportation or exclusion and is insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). Moreover, although the record indicates that the applicant's mother is diagnosed with depression, it lacks details of her condition and treatment. Similarly, the record lacks documentary evidence demonstrating that the applicant's father is experiencing extreme emotional hardship resulting from his separation from the applicant.

The AAO finds that the applicant has also failed to demonstrate that his parents, natives of India, would experience extreme hardship if they relocate to India to be with him. The record does not establish that either the applicant's father or his mother would be unable to find gainful employment in India. The record also does not demonstrate that the applicant's mother would be unable to obtain medical care there. With respect to the applicant's father's concerns regarding his family ties in the United States, the AAO recognizes that separation from family and friends would be difficult for the applicant's parents; however, we also note that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Furthermore, the record lacks documentary evidence demonstrating that the applicant's siblings in the United States financially depend on the applicant's father.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.