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

(b)(6)

DATE: FEB 2 8 2013 Office: NEW DELHI File:

IN RE: Applicant:

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, New Delhi, India, denied the waiver application, and it 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a U.S. visa by fraud or misrepresentation. The applicant contests this finding of inadmissibility, but alternatively seeks a waiver of inadmissibility in order to immigrate to the United States and reside with his U.S. citizen parents.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* January 25, 2012.

On appeal, counsel contends that the applicant is not inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, due to lack of an intent to deceive, as well as to presentation of valid documents. Counsel alternatively argues the applicant has established that his inadmissibility would result in extreme hardship his U.S. citizen parents.

The record includes, but is not limited to, counsel's brief; supporting statements; a psychological evaluation and medical records, including prescriptions; financial documentation, including tax returns, social security statements, and notice of mortgage default and foreclosure; copies of professional certificates and school transcripts; birth and naturalization certificates; and country condition information. The entire record was reviewed and all relevant information considered in reaching this decision.

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.

Section 212(i)(1) of the Act provides:

> 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 [...].

The field office director found the record to establish that the applicant had committed fraud or misrepresented a material fact in dealings with Consular Officers regarding visa matters. In 2003, an

immigrant visa (IV) interview uncovered a misrepresentation in that the applicant's paperwork[1] stated he was single (i.e., never been married), when the proper response would have been "divorced," by virtue of the 2001 termination of his 1995 marriage. He failed to correct the error until confronted by an officer with proof that he had been married when the petition was filed.

Counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i), because the applicant divulged his marital status in his first immigration filing after approval of the 1996 petition, when he applied for an H1-B visa in 1999. The applicant points out that he had already informed the government at his 1999 interview and in supporting paperwork that he was married. Therefore, he claims that referring to himself in 2003 as "single," rather than "divorced," was an innocent error that does not render him inadmissible.

A misrepresentation is generally material for immigration purposes only if by it the alien receives a benefit for which he or she would not otherwise be eligible. *See Kungys* v. *United States,* 485 US 759 (1988); *see also Matter of Tijam,* 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez,* 10 I&N Dec. 409 (BIA 1962; AG 1964) and *Matter* of *S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

In *Kungys v. United States*, 485 U.S. 759 (1988), the U.S. Supreme Court found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now USCIS) decisions. In addition, *Matter of S- and B-C-* states that the elements of a material misrepresentation are as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Id., 9 I&N Dec. 436, 447 (BIA 1950; AG 1961).

As discussed above, the field office director found the applicant sought to preclude inquiry into his eligibility for an immigrant visa by representing himself as being single, rather than divorced. This self-designation as single (never been married) rather than divorced is clearly material, since not revealing a divorce would have shut off a line of inquiry regarding a prior marriage, which would have made the first Form I-130 unapprovable from the outset.[2] Besides stating on the application that he was never married, the applicant did not correct the error during consular interviews for an immigrant visa until confronted with a marriage certificate uncovered by embassy staff. Therefore, he is inadmissible under section 212(a)(6)(C) of the Act and requires a waiver.

---

[1] As counsel observes, although the waiver denial refers to Form DS-156 in conjunction with the IV interview, the relevant form would have been a DS-230.

[2] The Form I-130 was subsequently revoked in 2009, because the applicant was married at the time it was filed and thus could not be the beneficiary of a petition for the unmarried son of a Lawful Permanent Resident.

A waiver of inadmissibility under section 212(i) is dependent on a showing that the bar to admission imposes 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are both qualifying relatives in this case. If extreme hardship to either of them 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-Moralez*, 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 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 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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from relocation, the applicant contends that moving back to India would impose extreme hardship on his naturalized U.S. citizen mother and stepfather, who are 72 and 73 years old, respectively. The record reflects that both suffer from a number of medical conditions. His mother has been diagnosed with major depression and anxiety, is taking several prescription and nonprescription medications for high cholesterol, high blood pressure, and diabetes, and has had cataracts in both eyes and a retinal detachment that was surgically repaired. All three of her siblings live in the United States along with one of her two children. Like his wife, the applicant's father has high blood pressure and diabetes, for which he takes medication, and also has degenerative knee problems that have limited his ability to work. Official U.S. government reporting notes that the general healthcare standard is variable, only approaching U.S. standards in major cities. *See India—Country Specific Information,* Department of State, January 18, 2013. The applicant's parents have lived here for approximately 20 years and established roots in the community, including becoming homeowners. They report being at risk of losing their residence to foreclosure, and the record substantiates this claim and shows that they are experiencing financial difficulties.

Although there is no indication the qualifying relatives are physically unable to travel or that treatments for their medical conditions are unavailable in India, the record establishes that their limited resources may restrict their accessibility to adequate care overseas. A 2011 joint tax return reflects that social security payments account for nearly a third of their reported $22,500 income. In addition, they would be leaving their established healthcare providers, their family support network, and their home. Having demonstrated that their home ownership is in jeopardy, the record suggests departing the country will make it more difficult for them to protect this property from foreclosure. In light of their age and length of residence in the United States, the applicant has provided sufficient evidence for us to find the hardship a qualifying relative would experience by relocating to India would amount to hardship that is beyond the common or typical result of removal or inadmissibility of a loved one. The applicant has therefore met his burden of establishing that a qualifying relative would suffer extreme hardship were he or she to relocate abroad to reside with the applicant due to his inadmissibility.

Regarding separation, the applicant's mother contends that her son's absence has caused her emotional hardship. The psychologist who diagnosed her depression and anxiety reported symptoms including insomnia, headaches, sadness, and weight loss, and attributed many of these problems to parental worry about the applicant's immigration problems. *See Psychological Report,* April 20,

2011. The report concludes that allowing her son to reunite with her in the United States would alleviate an underlying cause of her medical problems. Although the AAO recognizes she is experiencing hardship due to separation from her son, the report does not indicate that she is experiencing hardship beyond the common results of separation. There is no indication on record that either of the applicant's parents have visited him overseas.

Although the applicant claims that his absence imposes financial hardship on his parents, there is no evidence that he has ever contributed to their household maintenance (or they to his). Rather, he acknowledges being unable to send them any funds to help out, and provides no record of his employment or income. Counsel states that the qualifying relatives are counting on the applicant to care for them financially in their old age, both by working after coming here to support them and by providing caregiver services they are unable to afford to pay a third party. These prospective financial benefits are speculative and unsubstantiated, as the record contains no documentation of the applicant's employment history, or that he has a pending job offer in the United States or job prospects here. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Coupled with the lack of evidence that the applicant's inadmissibility represents a financial hardship, the report regarding psychological issues reflects that the applicant has not established his mother is suffering and will continue to suffer extreme hardship if he cannot immigrate to the United States. The record does not show that the cumulative effect of the emotional and financial hardships the applicant's parents will experience due to their son's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. Their friends, relatives, and providers of medical treatment comprise a support network here. The AAO thus concludes that, based on the record evidence, were the applicant's parents to remain in the United States without the applicant due to his inadmissibility, they would not suffer hardship that rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

The documentation on record, when considered in its totality, reflects that the applicant has not established that his parents would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result

of removal or inadmissibility and the AAO therefore finds that the applicant has failed to establish extreme hardship as required under section 212(i) of the Act.

In proceedings 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.