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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**

H5

DATE: **OCT 25 2011** OFFICE: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: APPLICANT: [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 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 Field Office Director, San Francisco, CA, 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 has resided in the United States since December 21, 1991, when he used an Indian passport with a valid nonimmigrant visa which did not belong to him to seek admission into the United States. He 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 to procure admission to the United States through fraud or misrepresentation. The applicant is the son of a U.S. Citizen mother and a lawful permanent resident father and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen mother and lawful permanent resident father.

The Field Office Director concluded there was insufficient evidence of extreme hardship to qualifying relatives and denied the application accordingly. *See Decision of Field Office Director* dated June 19, 2009.

On appeal, counsel for the applicant asserts because the applicant has been found to be credible by the Ninth Circuit Court of Appeals (Ninth Circuit) "his sworn statements should be taken as true and credible on their face absent evidence to the contrary." *Brief in support of appeal*, August 26, 2009. In addition to the applicant's sworn statements, the I-601 waiver contains statements from his U.S. Citizen mother, his lawful permanent resident father, siblings [REDACTED] and letters from physicians. Counsel contends "due to [the applicant's] parent's poor health, and advanced age, it is well documented that they are completely [dependent] on him, and would suffer extreme hardship should he be removed from their home." *Id.* Counsel emphasizes "there is not a scintilla of contrary evidence" on the facts as shown in the sworn statements, and as such the assertions therein should be taken as credible. *Id.*

The record includes, but is not limited to, the documents listed above, Federal Income Tax returns, immigration petitions and applications for the applicant, the applicant's statements, and records of proceedings before the Ninth Circuit and the Executive Office for Immigration Review. The entire record was reviewed and considered in rendering 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.

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.

In the present case, the record reflects that the applicant entered the United States using an Indian passport with a valid nonimmigrant visa which did not belong to him in the name of [REDACTED]. Although the applicant claimed he did not present this passport to immigration officials for entry, both USCIS and an immigration judge found he had presented the passport to immigration officials, and the applicant admitted to the misrepresentation or fraud. The applicant was paroled into the United States to pursue his asylum claim, and his parole was later terminated. The applicant was placed into deportation proceedings, which were terminated, and is currently in removal proceedings. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relatives are his U.S. Citizen mother and lawful permanent resident father.

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).

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.

On appeal, counsel for the applicant contends that the applicant’s sworn statements should be taken as true “absent evidence to the contrary” because he has previously been found credible by the Ninth Circuit. *Brief in support of appeal*, August 26, 2009. Counsel states the record should contain ample evidence of the applicant’s lack of criminal history, given that he has given his fingerprints to USCIS “numerous times.” *Id.* Regarding the extreme hardship to the applicant’s parents, counsel asserts they are completely dependent on him, and their health issues are “truly morbid.” *Id.* In support, the applicant’s mother, [REDACTED] submits a sworn statement. Therein, [REDACTED] states: “I have been suffering from arthritis, asthma, heart complications, diabetes and high blood pressure... I visit my doctor once or twice in a week... Even though I have four siblings, besides [REDACTED] in the United States, but none of them is available to take care of me and my wife. Our culture does not permit us to reside with our daughters as they are all married.

They have their own difficulties and are not in [a] position to support us anyways... [redacted] among my children... has been taking care of us on day to day basis. He takes us to social events and to our respective medical appointments. He picks up our prescriptions. He often takes us to the [redacted] temple. We are completely dependent upon him. We will be completely handicapped without him." *Sworn statement of [redacted] June 2, 2008.* A letter from [redacted], M.D., verifies that [redacted] is taking care of both his parents, mother [redacted] & father [redacted]. He brings them to their doctor's appointments and other medical problems." *Letter from [redacted] June 6, 2008.* A letter from [redacted] indicates the applicant's father is "being treated for anemia of chronic disease and chronic myelogenous leukemia. His son, [redacted] is providing transportation for his father's medical appointments." *Letter from [redacted] M.D., June 16, 2008.* [redacted] sworn statement echoes his wife's. Therein, the applicant's father affirms he is 79 years old, he and his wife are unemployed, his "wife has been suffering from arthritis, asthma, heart complications, diabetes, and high blood pressure. [He has] been suffering from chronic myelogeneous leukemia. [He] visit[s] [his] doctor at least once in a week. [He is] under [his] doctor's constant observation." *Sworn statement of [redacted] June 24, 2008.* The applicant's father adds: "Even though I have four siblings, besides [redacted] in the United States, but none of them is available to take [care] of me and my wife. Our culture does not permit us to reside with our daughters as they are all married. They have their own difficulties and are not in [a] position to support us anyways... It is only [redacted] among my children who has been taking care of me and my wife on [a] day to day basis. He takes us to social events and to our respective medical appointments. He picks up our prescriptions. He often takes us to the Sikh temple. We are completely dependent upon him. I have no doubt in my mind that we will be completely handicapped without [redacted] being around." *Id.*

The applicant's sisters submit declarations in support of the applicant's waiver. One sister, [redacted] states she is "single with three children... [She] is currently on work disability, because of a work related injury with poor health. Given [her] current family and economic situation, [she] would unfortunately be unable to care and provide for [her] mother, [redacted]. She has a heart problem, and suffers from asthma and arthritis. She is on medication and is under the care of a doctor. She is seventy four years old. [redacted] would be unable to provide for her daily needs, including, but not limited to transporting her to medical appointments. [redacted] brother, [redacted] is the sole provider and supported of our parents. [redacted] does] not have the resources or ability to assume that role." *Declaration of [redacted] June 14, 2008.* [redacted]

[redacted] declarations are very similar to [redacted]. Therein, the sisters state: "Given our current family and economic situation, I would unfortunately be unable to care and provide for my mother, [redacted]. She has a heart problem, and suffers from asthma and arthritis. She is on medication and is under the care of a doctor. She is seventy four years old. I would be unable to provide for her daily needs, including, but not limited to transporting her to medical appointments. My brother, [redacted] is the sole provider and supported of our parents. I do not have the resources or ability to assume that role." *Declaration of [redacted] June 14, 2008, see also declaration of [redacted] June 12, 2008, and declaration of [redacted] June 12, 2008.*

Counsel additionally contends the applicant's employment records are not critical in this analysis, and his "family ties or number of relatives in India is not relevant." *Brief in support of appeal*, August 26, 2009.

Counsel asserts the "sworn statements submitted by [the] applicant, applicant's U.S. Citizen mother, LPR father, and U.S. Citizen sisters actually *do* corroborate each other, and should be taken as true, and at face value absent adequate evidence to the contrary, as should the statements by the two treating physicians." *Brief in support of appeal*, August 26, 2009. Despite this assertion, the statements by the families contain several inconsistencies and many statements which are not corroborated by supporting evidence. For instance, the applicant states his "parents are citizens of the United States." *Sworn statement of* [REDACTED] June 24, 2009. However, the record indicates although his mother is in fact a U.S. citizen, his father is a lawful permanent resident, not a U.S. Citizen. *See naturalization certificate and lawful permanent resident card, see also sworn statement of* [REDACTED] June 24, 2008. The applicant's mother, meanwhile, states "all [her] daughters are happily married." *Sworn statement of* [REDACTED] June 24, 2008. One daughter, [REDACTED] indicates she is not married, but instead is "single with three children." *Declaration of* [REDACTED] June 14, 2008. Furthermore, the applicant's mother refers to her husband as "my wife," and both parents refer to their children as "siblings." *Sworn statement of* [REDACTED] June 24, 2008, *see also sworn statement of* [REDACTED] June 24, 2008. Although these inconsistencies and misstatements may not relate to a finding of extreme hardship, they bring into question the statements themselves, which are not corroborated by supporting evidence. Moreover, the applicant submits almost identical declarations from his sisters which also lack details or evidence to flesh out and support the assertions therein. The applicant's parents both claim "Our culture does not permit us to reside with our daughters as they are all married. They have their own difficulties and are not in position[s] to support us anyways." *Sworn statement of* [REDACTED] June 24, 2008, *see also sworn statement of* [REDACTED] June 24, 2008. All four daughters claim: "Given our current family and economic situation, I would unfortunately be unable to care and provide for my mother, [REDACTED] My brother, [REDACTED] is the sole provider and supporter of our parents. I would be unable to provide for her daily needs, including, but not limited to transporting her to medical appointments." *Declaration of* [REDACTED] June 14, 2008, and *declarations of* [REDACTED] June 12, 2008. Notwithstanding these identical assertions, the record still lacks individualized explanations from each daughter about their specific family and economic situations, and the reasons those situations do not allow for parental care. The record also does not contain an explanation of the cultural precept which does not permit a parent to live in a married daughter's home.

Counsel is correct in that the record contains sufficient evidence of the applicant's lack of criminal history, as well as evidence that he and his parents reside at the same address. *See federal income tax returns*. The record, however, does not contain an explanation from the applicant's mother's physician describing her complete medical condition and how it affects her quality of life to allow an assessment of her medical needs and whether the applicant can assist with those needs. The one letter from a physician regarding the applicant's mother does not identify her medical conditions, and only states the applicant "is taking care of both of his parents... He brings them to their doctor's appointments and other medical problems." *Letter from* [REDACTED] June 6,

2008. The applicant's mother describes the duties the applicant performs on her behalf, but those involve transportation ("He takes us to social events and to our respective medical appointments. He picks up our prescriptions. He often takes us to the Sikh temple.") *Sworn statement of* [REDACTED] June 24, 2008.¹ Not only does the record lack evidence from a treating physician on the applicant's mother's medical condition, it also does not contain sufficient evidence that, although the applicant fulfills some transportation needs, the applicant's mother would suffer sufficient hardship as a result of the applicant's inadmissibility. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's mother would suffer as a result of the applicant's inadmissibility.

The record contains more evidence on the applicant's father's medical conditions. His physician reports he is "being treated for anemia of chronic disease and chronic myelogenous leukemia. His son, [REDACTED] is providing transportation for his father's medical appointments." *Letter from* [REDACTED] M.D., June 16, 2008. The AAO acknowledges these are serious medical conditions, and there is sufficient evidence of record, given the treating physician's letter, that the applicant's father suffers from these conditions. Nevertheless, as with the applicant's mother, the record again lacks an explanation from the treating physician of the treatment or family assistance needed in addition to transportation assistance, without which the AAO cannot reach conclusions about the treatment needed, and the extent of any hardship the applicant's father would suffer as a result of the applicant's inadmissibility.

Counsel's contention that the Ninth Circuit's finding on the applicant's credibility should prompt the AAO to take his statements as similarly credible without supporting evidence is erroneous. Even had the Ninth Circuit explicitly made such a finding in its November 22, 2004 decision, statements without supporting evidence, although considered, cannot be given sufficient weight as to meet the applicant's burden of proof. *Brief in support of appeal*, August 26, 2009, *see also Memorandum*, [REDACTED] *Ninth Circuit Court of Appeals*, November 22, 2004. This applies equally to assertions in other affidavits. Although assertions in these statements and declarations are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *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 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)). Counsel's contentions on the applicant's employment record and family ties in the United States, which are relevant in that they pertain to an evaluation on discretion once extreme hardship has been found, are similarly unsupported. Without supporting evidence, the assertions of counsel

¹ The record also contains an eleven year old letter from [REDACTED] M.D., stating the applicant's mother is legally blind. *Letter from* [REDACTED] M.D., February 9, 2000. This issue was not raised in the I-601 waiver or this appeal.

will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

While the AAO acknowledges that the applicant's parents would face some difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that their hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the medical or other impacts of separation on the applicant's parents are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that they would suffer extreme hardship if the waiver application is denied and the applicant returns to India without his parents.

Moreover, the record lacks assertions or evidence on whether the applicant's parents would suffer hardship upon relocation to India. For instance, there is no evidence on whether the applicant's parents could obtain suitable medical treatment for their conditions in India. As such, the AAO finds the record does not contain sufficient evidence to establish the applicant's parents would suffer extreme hardship if the waiver application is denied and the parents relocate to India with the applicant.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen mother and lawful permanent resident father as required under section 212(i) of the Act. 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.

Counsel asserts "the USCIS could easily have contacted the authors of the sworn affidavits, or the physicians to verify the contents, but no such effort was made." *Brief in support of appeal*, August 26, 2009. Counsel fails to recognize that the burden of proving eligibility remains entirely with the applicant, not with USCIS. Section 291 of the Act states, "Whenever any person makes application for a visa or any other document required for entry, or makes application for admission... *the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act...*" INA §291, 8 U.S.C. § 1361 (emphasis added). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.