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



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

[REDACTED]

HS

DATE **AUG 07 2012** OFFICE: ATLANTA, GA

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 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

DISCUSSION: The waiver application was denied by the Field Office Director, 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 June 4, 1998, when he was admitted pursuant to a nonimmigrant visa. The Field Office Director found that when he applied for an immigrant visa as the unmarried son of a U.S. Citizen, who was a permanent resident when the immigrant petition was filed, he claimed he was single when in fact he was married. 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 attempted to procure a visa to the United States through fraud or misrepresentation. The applicant is the son and spouse of U.S. Citizens and is the beneficiary of an approved 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 spouse and parent.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to his qualifying relatives and denied the application accordingly. *See Decision of Field Office Director dated October 13, 2009.*

On appeal, counsel for the applicant contests inadmissibility, asserting that the record does not support a finding of willful misrepresentation. Counsel contends if the applicant remains inadmissible, the applicant has shown that his U.S. Citizen mother and spouse would both experience extreme hardship upon relocation to India and if they were separated from the applicant.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, financial and medical documents, documentation of criminal proceedings, statements from the applicant, his spouse and his mother, letters from family, friends, and community members, documentation of employment, bus schedules, other applications and petitions filed on behalf of the applicant, and photographs. 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's mother had filed a Form I-130 Petition for Alien Relative on his behalf when she was a lawful permanent resident. Pursuant to his application for an immigrant visa in 2003, after his mother had become a U.S. Citizen, the applicant informed consular officers that he was single when in fact he was married to [REDACTED]

Counsel contends that because the applicant believed he was only engaged to [REDACTED] and not married, he did not have the necessary *mens rea* to have misrepresented his marital status willfully. This contention, however, is not supported by the record. The requirement that the misrepresentation is made willfully is satisfied by a finding that the misrepresentation was deliberate and voluntary. *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir.1977). Knowledge of the falsity of a representation is sufficient. *Id.*, citing *Matter of Hui*, 15 I & N Dec. 288 (BIA 1975). The record contains sufficient evidence to demonstrate that when the applicant applied for an immigrant visa, he knew he was married to [REDACTED] on December 13, 2002. Evidence of record, which includes an invitation and a program for the marriage ceremony and photographs from the ceremony indicate that the applicant knew the ritual he performed on that date was a marriage ceremony, not an engagement ceremony. Furthermore, the record contains correspondence from the applicant's mother to [REDACTED] father describing how, in order to obtain permanent residence for [REDACTED] the applicant and [REDACTED] should go ahead with the wedding on December 13, not file the marriage papers with the court, and later get officially married in the United States after the applicant's mother naturalized. It is noted that an attorney for the applicant confirmed that the ceremony undertaken on December 13, 2002 constitutes a marriage according to Hindu tradition.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Given the evidence of record, the AAO finds the applicant has not established by a preponderance of the evidence that his misrepresentation was not willful. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through fraud or misrepresentation. The applicant's qualifying relatives for a waiver of this inadmissibility are his U.S. Citizen spouse and U.S. Citizen mother.

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.

The applicant's spouse contends she would experience medical, psychological, and financial hardship if separated from the applicant. She claims she earns \$32,000 a year as a medical assistant, and her expenses include \$4,000 for her daughter, who lives in Seattle, Washington with her ex-husband, and \$660 for her condo in Seattle. She states that if the applicant relocated to India without her, she would probably move back to Seattle to live with her daughter, which would in turn entail loss of her current job and consequently her income. The applicant's spouse explains that she is able to travel to Seattle to see her daughter frequently because of the applicant's job benefits, but if the applicant were to lose that job by relocating to India she could no longer do so. The applicant's spouse adds that she has several medical issues, and has had heart surgery, thyroid and pituitary problems, and a tumor removed. The record contains a letter indicating that the applicant's spouse was due to give birth in 2010.

The applicant's spouse also asserts that she would experience extreme difficulties upon relocation to India. She states that if she relocated, she would not be able to take her daughter who lives in Seattle because of the custody arrangement with her ex-husband. The spouse states she worries about how she would adjust to life in India because she does not know any Indian languages and would be unable to obtain employment there. She explains that she visited India for six weeks in 1994, found that watching the women work was depressing, and claims that she had a terrible time with dehydration and shortness of breath. The applicant's spouse also expresses concern with respect to the medical care available in India, and discrimination because of her Catholic faith.

The applicant's mother states that she relies on the applicant and her other son, [REDACTED], because of the limitations she has from her medical conditions. She indicates that she has cataracts, and has scheduled eye surgery. She adds that she has arthritis and hypertension, high blood pressure, and irritable bowel, and that she depends on her sons for buying groceries and cleaning the house. The applicant's mother claims that although her son [REDACTED] drives her to and from work most of the time, the applicant drives her when [REDACTED] is out of town for work. A letter from [REDACTED] indicates that he is out of town for work 80 percent of the time. Counsel contends that without the applicant present to drive his mother to work, she would lose her job and therefore suffer financial hardship. The applicant's mother further explains that she would not move back to India, as she is too old, knows life there would be a struggle, and her health would continue to decline.

The record contains a letter from the mother's physician stating that she has hypertension and arthritis, and some indication that she has cataracts. However, although the mother claims her

sons clean the house and buy the groceries because she is unable to, the record does not contain an explanation in plain language from the treating physician of the exact nature and severity of any conditions and a description of any treatment or family assistance needed. Without this explanation, the AAO is unable to determine the degree of hardship, if any, the applicant's mother will experience due to her medical conditions without the applicant present to assist her. The record also does not establish why the applicant's brother and spouse, who live with the mother, are unable to assist the mother with these chores and with driving her to work, or whether the mother would be able to drive to work after her scheduled cataract surgery. By extension, the record also does not support the conclusion that the applicant's mother would have to quit her job and suffer financial hardship without the applicant present to drive her. Furthermore, the record contains inconsistent assertions with respect to the assistance the applicant's brother is able to provide. The applicant's mother claims that "[u]sually, [redacted] takes me [to work], but when he is out of town, [redacted] will drive me." *Declaration of applicant's mother*, August 12, 2009. This is not consistent with [redacted] explanation, that his work requires him to travel 80 percent of the time, and that he is not home most of the time to assist his mother and drive her to work. *Letter from [redacted]*, August 14, 2009. Given these inconsistencies, the AAO is unable to determine the degree of assistance the applicant's brother will need to provide without the applicant present.

While the AAO acknowledges that the applicant's mother would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her 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 financial, medical, emotional or other impacts of separation on the applicant's mother are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to India without his mother.

The record similarly lacks sufficient evidence to establish the existence of extreme hardship upon relocation to India. The mother's claims that her life would be a struggle and her health would continue to decline are not supported by evidence of record. Although the mother's assertions 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)). The AAO also notes that the applicant's mother is a native of India, and worked for 30 years in the U.S. Embassy in New Delhi, India.

Given the evidence of record, the AAO does not find the applicant has established that his mother's hardship, when viewed in the aggregate, would rise above the distress commonly experienced when families relocate as a result of inadmissibility or removal. As such, the AAO

cannot find that the applicant's mother would experience extreme hardship upon relocation to India.

The applicant has also failed to establish the existence of extreme hardship to his spouse upon separation from the applicant. Despite submission of some evidence on the spouse's income, the record does not contain sufficient evidence of household expenses to support assertions of financial hardship, including evidence of expenses incurred in Seattle. Moreover, although the applicant's spouse asserts that she would experience financial hardship without the applicant because she would move to Seattle and therefore lose her job as a medical assistant in Georgia, the record does not demonstrate why she would be unable to find adequate employment in Seattle given her background and skills. As with the applicant's mother, the record does not contain an explanation from the spouse's treating physician of the exact nature and severity of any conditions and a description of any treatment or family assistance needed. Without this explanation, the AAO is unable to determine what assistance the applicant provides his spouse due to her medical conditions, if any, and the subsequent degree of hardship the spouse would experience without the applicant present to provide such assistance.

The AAO recognizes that the applicant's spouse will experience some difficulties without the applicant present, including difficulties inherent in raising a child. However, the applicant has not established that his spouse's hardship is above and beyond the distress normally created when families separate as a result of inadmissibility or removal. In that the record does not contain enough evidence to demonstrate that the financial, medical, emotional or other impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to India without his spouse.

The applicant has demonstrated that his spouse would experience extreme hardship upon relocation to India. The record reflects that the applicant's spouse was born in Mexico, and has never lived in India. The record further indicates that the applicant's spouse does not know any Indian languages, and that relocating to India would entail further separation from her daughter who lives in Seattle. In light of this evidence, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to India to live with the applicant.

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 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 to his spouse from separation, we cannot find that refusal of admission would result in extreme hardship to the spouse in this case.

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 spouse and his U.S. Citizen parent 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.

In proceedings for a 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.