

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**



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DATE: **DEC 24 2012**

Office: NEW DELHI, INDIA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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 Maria Yeh

Ron Rosenberg

Acting Chief, Administrative Appeals Office

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 Bangladesh 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 attempted to procure a visa through fraud or misrepresentation. The applicant is the son of a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant asserts that he is not inadmissible, but in the alternative seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to join his U.S. citizen mother in the United States.

The Director concluded that the applicant is inadmissible for providing false evidence and testimony under oath regarding his date of birth in his application for a V visa. The Director also concluded that the applicant failed to demonstrate extreme hardship to his mother and denied the waiver application accordingly. *See Decision of Field Office Director*, dated July 21, 2011.

On appeal, the applicant's mother claims that she and the applicant did not intend to provide false information regarding the applicant's date of birth. The applicant's mother states that she could not remember the applicant's exact date of birth because she is uneducated and because until recently, Bangladeshi law did not require the registration of births. She also asserts that a "local advocate" assisted the applicant in obtaining the necessary documents for the I-130 petition and that the advocate was responsible for providing any falsified documents. *See Brief Statement of Syeda Rabeya Khanam*.

The record includes, but is not limited to: statements from the applicant and his mother; statements from witnesses to the applicant's birth; medical and financial records relating to the applicant's mother; the applicant's birth certificate as submitted with the I-130 petition; a report on birth registration in Bangladesh; and the applicant's mother's naturalization certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, he bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

On January 12, 1998, the applicant's mother filed a Form I-130 on the applicant's behalf. In connection with that petition, the applicant's mother submitted a copy of the applicant's birth certificate, which indicated that he was born on April 26, 1982. That same date of birth was listed on the Form I-130, which was approved on October 8, 1998. In 2001, the applicant filed an application for a V visa, on which he again indicated that his date of birth was April 26, 1982.¹ During an interview regarding his V visa application in December 2001, the applicant testified under oath to the same date of birth. Following that interview, immigration officials conducted a site visit and found that the applicant had falsified his year of birth. On June 17, 2008, the applicant appeared for an interview regarding his application for an immigrant visa and informed the consular officer that his true date of birth is April 26, 1979. On January 12, 2011, the applicant appeared for an interview regarding his waiver application and admitted that he had provided a false date of birth in his previous applications. The applicant does not dispute these facts on appeal. *See Brief Statement of Syeda Rabeya Khanam*, dated August 16, 2011.

To be considered material, a misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision. *See Kungys v. United States*, 485 U.S. 759, 771-72 (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). The Board of Immigration Appeals (Board) has held that a misrepresentation made in connection with an application for visa or other documents, or for 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.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-49 (BIA 1960; AG 1961).

The AAO finds that the applicant's misrepresentations regarding his date of birth were material to his V visa application. Pursuant to section 101(a)(15)(V) of the Act, 8 U.S.C. § 1101(a)(15)(V), to be eligible for a V visa an alien must be the spouse or child of a lawful permanent resident² and must be the beneficiary of a petition for a benefit under section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A). A child is defined as "an unmarried person under twenty-one years of age" Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). If the

¹ The exact date of the V visa application is not in the record, but the applicant would not have been eligible to file such application prior to January 12, 2001, three years after the Form I-130 was filed. Section 101(a)(15)(V) of the Act, 8 U.S.C. § 1101(a)(15)(V) (stating that an alien may be eligible for a V visa if he is the beneficiary of an approved I-130 petition which was filed at least three years earlier and an immigrant visa has not yet become available). The applicant's mother admits that she submitted a V visa application on the applicant's behalf in 2001 and that the applicant's date of birth listed on that application was the same incorrect date as that which she listed on the I-130. *See Brief Statement of Syeda Rabeya Khanam*, dated August 16, 2011. In 2001, the applicant was over 21 and would have been ineligible for a visa, which are only available to spouses or children under the age of 21 of lawful permanent residents.

² At the time the applicant filed his V visa application, his mother was still a lawful permanent resident. She naturalized on November 16, 2009. *See Naturalization Certificate of Syeda Rabeya Khanam*.

applicant's true date of birth were presented in connection with his V visa application, it would have been clear that he had turned 21 several months prior to the earliest possible filing of the application and was therefore ineligible for the visa.³ Therefore, the applicant's misrepresentation was material because he would have been ineligible for a V visa on the true facts. *See Matter of S- and B-C-*, 9 I&N Dec. at 448-49.

The AAO also finds that the applicant's misrepresentation was willful. Although the applicant and his mother claim that they did not remember his exact date of birth and that the advocate who assisted them provided the fraudulent birth certificate, there is insufficient evidence to support those claims. On his Form I-601, the applicant states that because his birth was not recorded, his parents memorized it "for as long as they could" and that "several years later" they enrolled him in school using his true date of birth. *Form I-601*, dated January 12, 2011. The applicant does not explain how he was unable to provide his correct birth date on his immigration applications when he could have consulted the school records. Furthermore, he does not explain how he and his mother recalled the correct month and day of his birth but mistakenly chose a year that was three years later than his actual birth date.

The applicant signed the V visa application, on which he provided the incorrect date of birth. The applicant also testified under oath as to the false date of birth during his interview regarding that application in 2001. The applicant did not provide his true date of birth until 2008, when he filed an application for an immigrant visa, and did not admit to using a false date of birth until 2011. When asked why he had not admitted his true date of birth during his V visa interview, the applicant stated that he had been instructed to agree with the information that was listed in his application. This shows that the applicant was aware that the information he had provided regarding his date of birth was false and that he made a deliberate decision not to correct it during his interview. The totality of the evidence demonstrates that the applicant did not offer an incorrect date of birth through accident or mistake, but instead did so willfully and with knowledge of its falsity.⁴ *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975); *see also Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). Regardless of whether the applicant intended to deceive the immigration officer with the false information, the applicant's misstatements meet the definition of willful misrepresentations of a material fact. *Id.*; *see also* section 212(a)(6)(C) of the Act.

Based on the totality of the evidence, the AAO finds that the applicant willfully misrepresented a material fact when he provided, on several occasions, false evidence and testimony regarding his

³ Although USCIS has issued guidance to indicate that aliens who have already received a V visa will not become ineligible for an extension of that visa simply by reaching the age of 21, aliens who are filing an initial application for V status are still required to meet the definition of a child in section 101(b) of the Act. *See Terrance M. O'Reilly, Director, Field Operations, Memorandum: Adjudication of Form I-539 for V-2 and V-3 Extension*, dated January 10, 2005.

⁴ Although the applicant submitted affidavits from individuals who claim to have witnessed his birth on April 26, 1979, these do not establish that he did not willfully misrepresent his date of birth on his V visa application. *See Statements of [REDACTED]* Instead, the affidavits confirm that there was collective knowledge in the community and family of the applicant's true date of birth, which contradicts his claim that he and his mother forgot the date.

date of birth in relation to his V visa application. See section 212(a)(6)(C) of the Act. The applicant has therefore failed to meet his burden of proving by a preponderance of the evidence that he is not inadmissible. *Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978); *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967). As the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, the AAO will now consider his application for a waiver of inadmissibility under section 212(i) of the Act.

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).

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 U.S. 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 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.

The AAO finds that the applicant has failed to establish extreme hardship to his mother on relocation to Bangladesh. In her statements, the applicant’s mother indicates that she would suffer extreme hardship if the applicant’s waiver application were denied because she is elderly and suffers from various illnesses. A letter from her doctor provides that she has been diagnosed with “uncontrolled diabetes mellitus, hyperglycemia, degenerative joint disease, osteoporosis and diabetic neuropathy.” Letter from [REDACTED] dated August 9, 2011. The applicant’s mother therefore claims that she would be unable to relocate to Bangladesh because she would not have access to the same standard of medical care that she has in the United States through Medicaid benefits. However, there is no evidence in the record regarding the healthcare system in Bangladesh which could support a finding that the applicant’s mother would be unable to receive appropriate treatment there. 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)). Additionally, inferior medical facilities in the country of relocation are not typically sufficient to establish extreme hardship to a qualifying relative. *Matter of Pilch*, 21 I&N Dec. 627, 632 (BIA 1996).

The applicant has also failed to establish that his mother would suffer extreme hardship on separation from the applicant. The applicant's mother states that she is unable to work and is financially dependent on her U.S. citizen son, with whom she lives. She asserts that the son who supports her is also unable to work and therefore relies on government benefits to support her, his own wife and children, and the applicant and his brother in Bangladesh. Therefore, she claims that if the applicant were able to come to the United States, he would help support the family financially. However, economic disadvantage is a common result of the inadmissibility or removal of a close family member and does not reach the level of extreme hardship. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999).

The AAO finds that the applicant has failed to demonstrate extreme hardship to his U.S. citizen mother 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 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. 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.