



[REDACTED]

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DATE: DEC 24 2012

Office: BANGKOK

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,

*for* 

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 having attempted to obtain a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, in 1994, the applicant attempted to procure entry to the United States by presenting a fraudulent passport. In addition, in 2003, the applicant stated that he was single when in fact he was married when attempting to procure an immigrant visa as an unmarried son of a U.S. citizen. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen parents.

The district director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 5, 2011.

In support of the appeal, previous counsel submitted the following: a brief; a photograph of the applicant's father; financial documentation; and medical and mental health documentation. 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, that:

- (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 that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General (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...

A waiver of inadmissibility under section 212(i) of the Act 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. The applicant's U.S. citizen parents are the only qualifying relatives in this case. Hardship to the applicant can be considered only insofar as it results

in hardship to a qualifying relative. If extreme hardship to a qualifying relative 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-Morales*, 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 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 U.S. citizen parents contend that they will experience emotional, physical and financial hardship were the applicant to remain abroad while they reside in the United States. To begin, the applicant's father details in an affidavit that his wife has been suffering from depression and anxiety since the applicant's visa application was denied in December 2010. He explains that she is constantly sad and he often finds her crying uncontrollably and that is causing him hardship as well. He further explains that in addition to her mental issues, she has been suffering from numerous medical conditions and the stress of long-term separation from her son is exacerbating her health conditions. Finally, the applicant's father details that he is gainfully employed as a mail man but due to severe problems with his legs, he can hardly move around. He notes that if he loses his job, he and his wife will have no other source of income. Thus, the applicant's father concludes that he and his wife need their son to help care for them on a daily basis and assist with the finances of the household. *Affidavit of [REDACTED]* dated February 21, 2011. In a separate declaration, the applicant's mother echoes her husband's sentiments with respect to their need to have the applicant reside in the United States with them. *Affidavit of [REDACTED]*

To begin, no letters have been provided from the applicant's father's treating physician outlining his specific medical conditions, the treatment plan, the severity of the situation, and what specific hardships he is experiencing as a result of long-term separation from the applicant. Copies of prescriptions issued to the applicant's father in September 2011 do not suffice to establish extreme hardship. Further, the record does not establish that the emotional hardship the applicant's mother is currently experiencing is beyond the hardships normally associated with long-term separation from an adult son or daughter. As for the financial hardship referenced, although an Estimated Monthly Expenses report and select bills have been provided, said documentation does not establish that as a result of their son's inadmissibility, the applicant's parents are experiencing financial hardship. Nor has it been established that the applicant is unable to assist his parents with respect to their finances while he remains abroad. It has also not been established that the applicant's father is unable to work in another capacity if his leg pain is limiting his ability to perform his duties as a mail man. Finally, the record establishes that the applicant's siblings reside in the United States. It has not been established that they are unable to assist their parents, financially, emotionally and/or physically, should the need arise. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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). It has thus not been established that the applicant's U.S. citizen parents would experience

extreme hardship were they to remain in the United States while the applicant resides abroad as a result of his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's parents contend that they would suffer emotional and financial hardship were they to relocate abroad to reside with the applicant. To begin, the applicant's father details that it is difficult to obtain gainful employment in India and thus, they would experience financial hardship. In addition, the applicant's father details that his two daughters and their families and extended relatives currently reside in the United States and long-term separation from them would cause him and his wife hardship. *Supra at 2*. In a separate statement, the applicant's mother details that were she and her husband to relocate to India, they would not be able to access health care like they have in the United States. *Affidavit of* [REDACTED]

The record establishes that the applicant's father is in his early 70s and his mother is in her mid-60s. They have been residing in the United States for over twenty years. Were they to relocate abroad to reside with the applicant, they would experience hardship due to long-term separation from their daughters and their families, their extended relatives, their home, their community, the applicant's father's gainful employment and affordable medical coverage. Further, they would experience financial hardship as a result of the problematic economic conditions in India<sup>1</sup> and the resultant financial loss from selling their home when they only have negative equity at this time. Based on a totality of the circumstances, the AAO finds that relocating abroad to reside with the applicant would cause the applicant's elderly parents extreme hardship.

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 Pitch*, 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 relatives in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or is refused admission. There is no documentation establishing that the applicant's parents'

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<sup>1</sup> As noted by the U.S. Department of State, "700 million Indians live on \$2 per day or less, but there is a large and growing middle class of more than 50 million Indians with disposable income ranging from 200,000 to 1,000,000 rupees per year (\$4,166-\$20,833)...." *Background Note: India*, U.S. Department of State, dated April 17, 2012.

hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law.

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.