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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: JAN 3 0 2012 OFFICE: FRESNO, 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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Fresno, California, 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 gained entry the United States by willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 6, 2009.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) unfairly alleged that the applicant committed misrepresentation in acquiring the Resident Alien Card he used to enter the United States and further failed to consider all of the evidence submitted in support of the waiver application. He contends that the applicant has established that his spouse will suffer extreme hardship. *See Notice of Appeal or Motion (Form I-290B) and attachments.*

The record includes, but is not limited to, a statement from the applicant and his spouse detailing the hardship claim; various documents that relate to the applicant's and his spouse's income including income tax returns; country conditions materials on India; and counsel's brief. The entire record was reviewed and considered in arriving at 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.

The record reflects that on January 29, 1999 the applicant procured entry into the United States by presenting a counterfeit resident Alien Card (Form I-551). We note counsel's assertions that the applicant did not knowingly present a counterfeit Form I-551 at the Port-of-Entry, but thought that the Form I-551 was genuine. We also note the applicant's statement that he thought the Form I-551 to be legal. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, it is the applicant's burden to establish the truth of his claim, and there is nothing in the record that supports 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)). Therefore, the applicant is

inadmissible under section 212(a)(6)(C)(i) of the Act for having gained entry to the United States by fraud or the willful misrepresentation of a material fact.[1]

Section 212(i) of the Act provides that:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-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,

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[1] The record reflects a conviction for falsely reporting a crime in violation of California Penal Code § 148.5(a). We find no need to determine whether it is or is not a crime involving moral turpitude (CIMT) as even if a CIMT the conviction would be subject to the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act.

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 asserts that the applicant's spouse will suffer financial hardship if she resides in the United States with her two sons without the applicant. Counsel also contends that separation from the applicant will be unbearable for his children and spouse. He contends that the applicant's spouse will endure hardship as a single parent as she will not be able to pay the mortgage on her and the applicant's home or the loans for their store and their farm.

Counsel contends that under the Board of Immigration Appeals (BIA) ruling in *In re:* [redacted] (BIA, 2008) emotional hardship to the spouse should be considered as a separate hardship factor. We note the decision in [redacted] however, the decision is not a precedent decision and, therefore, is not binding on the AAO. Furthermore, there is no documentary evidence that establishes the emotional impact of the applicant's removal on his spouse. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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).

We also note counsel's citations to *Casem v. INS*, 8 F.3d 700 (9th Cir. 1993), and *Cerrillo-Perez v. INS* 809 F.2d 1419 (9th Cir. 1987) in the record. In these cases hardship to the respondents' children was considered by the 9th Circuit Court of Appeals. However, these decisions were reached in the removal context, rather than a 212(i) proceeding, where children are not qualifying relatives. It is also noted that the applicant's children are not qualifying relatives and the record does not include evidence to indicate how hardship the applicant's children would experience would impact their mother, the only qualifying relative.

The record does not support counsel's claim that separation would result in financial hardship to the applicant's spouse. It is noted that the record lacks details and supporting documentation of their business operations, including the roles the applicant and his spouse have in the businesses. The record does not demonstrate that the applicant's presence is necessary for the operation of the business or that his absence would adversely affect the business, such as to result in a reduction in the current flow of income to his spouse. Without this additional evidence of the family's business operations, the AAO is unable to assess the nature and extent of the financial hardship, if any, the applicant's spouse would experience in the applicant's absence.

Based on the record, the AAO does not find the claimed hardships, even when considered in the aggregate, to establish that the applicant's spouse would experience hardship beyond the norm as a result of separation.

Counsel asserts that relocation to India would result in extreme hardship to the applicant's spouse and their two children. Counsel contends that the applicant's and her sons have severe allergies to dust and pollen, which are aggravated by the environment in the applicant's home village in India. He also states that the village lacks properly constructed roads, has polluted water, and suffers from a general lack of hygiene. During the family's last trip to India, counsel asserts, the applicant's spouse and elder son fell ill and were unable to obtain proper medical care. Counsel contends that the lack of adequate medical facilities and hygienic conditions in the applicant's small village would negatively impact the applicant's spouse and children.

Counsel also contends that the applicant's spouse is concerned about political instability and police corruption in India, where police are known to implicate foreigners in frivolous criminal cases in order to extort money. Counsel further asserts that the applicant's spouse fears harassment due to her and her children's United States citizenship and their Sikh religion. Counsel points to articles describing incidents implicating police in corruptive practices in India.

Counsel contends that the applicant's spouse will face economic hardship because she and the applicant will be unable to obtain loans to establish another farm and grocery store business in India as they do not have credit or business experience in India. Counsel further contends that the applicant's children's education would be disrupted and they would suffer a loss of educational opportunity as there is no proper teaching facility in the applicant's village and the applicant cannot afford a private school.

In a February 27, 2008 statement, the applicant's spouse asserts that as an uneducated woman in a rural village she would be unlikely to find employment in India. The applicant's spouse also states that she and the applicant would not be able to obtain loans to own and operate the type of farm the family owns in the United States and that their United States properties would be foreclosed on because they would not be able to pay the mortgages. The applicant's spouse also states that she does not have family in India; that she and the applicant do not own property in India and that they would have to live in the same village as the applicant's mother. She states that she and her children suffer from allergies and that they would face medical risks because of pollution and the lack of medical services in the village. She states that the last time she visited India her older son suffered an allergic attack but he could not obtain medical attention.

The applicant's spouse also asserts that their children would not have the same quality of education and life in India due to poor conditions and substandard education in the village where they would live. While counsel and the applicant's spouse make the claim that the applicant's children would suffer as a result of substandard education and living conditions in India, the record does not document this hardship. We also note that the children are not qualifying relatives and the record does not establish the impact of any such hardships the children might suffer on their mother, the only qualifying relative.

The record includes several articles published by [redacted] including articles reporting instances of corrupt officials taking bribes; several articles on conflicts affecting the Punjab region; and one article on healthcare in India. These reports describe generalized country conditions, and the record does not indicate how they specifically affect the applicant's spouse. The submitted country conditions information fails to establish that the applicant's spouse would be at risk as a result of Indian political instability or corruption.

The submitted country conditions information also fails to establish that the applicant's spouse would not have access to adequate healthcare in India, and the record fails to document that the spouse and older son suffer from any medical conditions for which they would require treatment in India. It is noted that the record indicates that the applicant and his spouse own and operate a grocery store here, as well as a farm, and there is no indication that they will not be able to obtain loans or employment in India or that they do not have transferable skills they could deploy in India. The assertions of counsel and the applicant's spouse's statements do not constitute evidence of hardship. *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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

While the AAO acknowledges that the applicant's spouse will suffer hardships as a result of her relocation, we do not find that these hardships, even when viewed in the aggregate with the hardships that commonly result from relocation, rise to the level of extreme hardship. Therefore, the applicant has not demonstrated that his spouse would experience extreme hardship if she relocates to India due to his inadmissibility.

As the record fails to establish that the applicant's spouse would experience extreme hardship as a result of his inadmissibility, he is statutorily ineligible for a waiver of inadmissibility under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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. *See* 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.