



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 25 2013

Office: NEW YORK, NEW YORK 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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision affirmed and the waiver application denied.

The applicant is a native and citizen of India, 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 willfully misrepresenting material facts to obtain an immigration benefit. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). 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 family.

The record also shows that the applicant was convicted for operating a motor vehicle under the influence of alcohol on April 13, 2004. The District Director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

The District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated February 27, 2009. Thereafter, the applicant appealed the District Director's decision, and the AAO dismissed the appeal on August 18, 2011.

In the motion to reopen, counsel states that the applicant's mother has become a legal permanent resident since the applicant filed his appeal and now resides with him and his family. As such, counsel asserts that she has become a qualifying relative and her hardships, in addition to the applicant's spouse's hardships, must be considered in the evaluation of his waiver application. Further, the applicant's attorney contends that the applicant's mother and spouse are suffering medical hardships and depend on the applicant's care, and that they would be "unable to obtain the same level of care in India," which would lead to their health deteriorating. In addition, the applicant's attorney asserts that India has a "host of problems regarding security, healthcare, environment, and society" and that sending the applicant back to India would result in the applicant's qualifying relatives suffering from extreme hardships. Lastly, the qualifying spouse, in her updated affidavit, states that she is concerned about their daughter relocating to India because she has never been there, does not know the language and may have difficulties attending school there.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); two Notices of Appeal or Motion (Forms I-290B); an appeal brief from the applicant's attorney; a psychological evaluation; a medical documents; documents establishing relationships, identity, and immigration status; country-conditions materials about India; a certificate of disposition for the applicant's conviction; financial documentation; and other documentation submitted with the

Application to Register Permanent Resident or Adjust Status (Form I-485). With the motion to reopen, counsel provides an additional brief and updated affidavits and letters from the applicant and his wife; medical documentation for the applicant's wife; additional country-conditions documentation regarding India and copies of the applicant's mother's U.S. permanent resident card and Social Security card. The motion also includes a table of contents of the supporting evidence accompanying it. Though the table notes that "Tab F" concerns a "Health Letter for the Applicant's Mother," such document was not provided. The AAO requested the document on April 3, 2013 and the applicant did not submit the requested document but instead provided a letter dated April 10, 2013, from the applicant's mother's doctor. We have incorporated this letter into the record. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel on motion asserts that the applicant's mother has become a qualifying relative since the appeal, and that she would suffer hardships upon separation or relocation to India. Because counsel submits evidence relating to these new facts on motion, the AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

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:

The Attorney General [now the Secretary of Homeland Security (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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's wife and mother are the only qualifying relatives 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, 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.

In the present case, the record reflects that the applicant presented a photo-substituted passport with a fraudulent visa when he arrived at the United States on February 12, 1991. He also made misrepresentations in his adjustment application by failing to disclose his criminal conviction. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for making material misrepresentations and for attempting to enter the United States through fraud or misrepresentation. While the applicant did not contest his inadmissibility in the original waiver application or on appeal, in his updated affidavit submitted with his motion, he states that it is "untrue" that he presented an altered passport. He adds that he surrendered his original passport and never altered it. He provides no evidence to support his assertions. Although the applicant'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 concluded in our prior decision that the applicant failed to establish that the qualifying spouse would suffer extreme hardship upon separation from the applicant. With regard to the potential hardships to the qualifying spouse upon separation, the AAO considered the qualifying spouse's assertions regarding her psychological and emotional hardships and found that the applicant failed to provide detail and explain how her emotional and psychological hardships are outside the ordinary consequences of removal. On motion, the applicant's counsel provides an updated affidavit and medical documentation. However, there was no additional detail regarding the potential emotional and psychological hardships potentially facing the qualifying spouse.

The applicant's attorney claims that the applicant's wife will also encounter medical hardship upon separation from the applicant. On motion counsel for the applicant submits a letter from the qualifying spouse's health-care provider indicating that she is under their care for hypothyroidism, fibromyalgia, iron deficiency anemia, chronic fatigue syndrome and chronic pain syndrome. According to the letter, her conditions "make it hard for [her] to hold down a job" and that "there is no consistency in her day on how she is going to be feeling from one day to the next." The motion also contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, laboratory results and prescriptions. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's wife. 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. The motion also contains an updated affidavit from the

applicant's spouse, who indicates that her "health is very bad" and that she has "many different health problems" and is on "different medications." However, the new evidence submitted on motion does not provide sufficient detail regarding the applicant's spouse's condition that would permit making a determination regarding her medical hardships.

In addition, the applicant and his wife, as well as counsel, assert that the applicant's mother, now a qualifying parent and living in the United States with the applicant, also suffers from medical hardships and would suffer upon separation from him. According to the applicant, his qualifying parent has "many health problems" and he is her "sole caretaker." He indicates that she uses a wheelchair to travel, is unable to walk properly and may require knee surgery. According to a doctor's letter regarding the applicant's mother, she is suffering from "osteoarthritis, HTN with various joint tenderness and swelling." The letter also indicates that she cannot walk and "need[s] support in performing daily activity [sic]," yet does not specify the type of support she requires. The letter lacks a clear explanation of the applicant's mother's physical and emotional condition. 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.

Further, the applicant asserts in the updated affidavit that he is the "sole breadwinner" of their family. The AAO found that tax returns, the affidavit from the qualifying spouse and other financial documentation submitted with Form I-485 support this assertion. However, the AAO indicated that no current financial documentation was submitted with the appeal. Similarly, on motion, no new evidence was provided to corroborate that the qualifying relatives would suffer financial hardships upon their separation from him.

The AAO also concluded in our prior decision that the applicant failed to establish that the qualifying spouse would suffer extreme hardship if she were to relocate to India with him. On motion, the applicant's attorney asserts that the qualifying spouse and the qualifying parent would suffer medical hardships if they relocated to India. The applicant's attorney asserts that the qualifying relatives' health would further deteriorate in India. The motion contains additional reports regarding healthcare in India. However, it is unclear how the applicant's spouse or mother would be specifically impacted, given their medical issues, by being "unable to obtain the same level of care in India," as stated by the applicant's attorney.

On motion, the applicant's attorney asserts that India has a "host of problems regarding security, healthcare, environment and society" and that sending the applicant back to India would result in the applicant's qualifying relatives suffering extreme hardships. The record contains country condition documents indicating the issues in India including, among others, healthcare, water supply, sanitation and education. However, as noted in our previous decision, the applicant did not address the area in India where he would live if he was removed and did not specifically address how the living conditions in India would specifically affect the qualifying spouse and mother, should they choose to relocate. Moreover, nothing in the record demonstrates that the applicant's mother, who recently relocated to the United States from India, experienced any difficulties while living there.

The qualifying spouse, in her updated affidavit, states that she has been in America for 22 years and that she is concerned about her inability, and their daughter's inability, to speak Punjabi. However, as noted above, the applicant did not explain where in India they would live or assert that English, the second official language of India, is not spoken there. While the AAO recognizes that relocating to India may be challenging, the applicant's qualifying spouse was likely previously aware that he could be removed, since he had been ordered removed over ten years before they married. Likewise, the applicant's mother must have also been aware that the applicant lacks legal status in the United States. As such, the qualifying relatives had reason to expect that the applicant may not be able to live with them in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567.

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 United States citizen spouse or legal permanent resident 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 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.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.