



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 31 2013** Office: LAS VEGAS, NV

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)

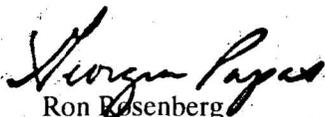
ON BEHALF OF APPLICANT:

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 Field Office Director, Las Vegas, Nevada. The matter 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 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 procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition of 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 live in the United States with her U.S. citizen spouse and U.S. citizen child.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated March 26, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding the applicant "guilty of misrepresentation" and states that her actions did not meet the elements of fraud or misrepresentation. The applicant's attorney also asserts that the Field Office Director erred in determining that the applicant did not demonstrate extreme hardship to her qualifying spouse by failing to consider all the hardship factors. In addition, the applicant's attorney indicates that the Field Office Director should have exercised discretion to grant the applicant's waiver application.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); a copy of the applicant's college degree; a copy of the qualifying spouse's favorable asylum decision; country-conditions documentation regarding India; medical documentation regarding the qualifying spouse, the applicant, their child and the qualifying spouse's father; proof of the qualifying spouse's health coverage for himself, the applicant and their child; letters from the qualifying spouse; relationship and identification documents for the qualifying spouse, applicant and their child; financial documentation; a document indicating the qualifying spouse's renunciation of his Indian citizenship; an approved Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant's attorney also refers to a brief in Form I-290B that he would file with the AAO within 30 days. However, as of the date of this decision, no brief has been submitted. The record, therefore, is considered complete. 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.

The BIA has held that the term "fraud" in the Act "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and

with intent to deceive the other party.” *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The “representations must be believed and acted upon by the party deceived to” the advantage of the deceiver. *Id.* However, intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

The record reflects that the applicant was admitted to the United States as a nonimmigrant student at Los Angeles International Airport on September 3, 2008. She presented a student visa to an immigration inspector indicating that she planned to attend California State University. The applicant testified at her adjustment interview on January 24, 2012 that though she intended to do so, she never attended school because she sprained her ankle and was advised not to travel. The record contains medical documentation showing that the applicant went to a hospital emergency room for pain in her right foot and ankle, which was diagnosed as an ankle sprain, and also had a follow-up appointment that indicated she had “no acute radiographic abnormality.” None of the medical documents state that her ankle pain would lead to her inability to attend school or to travel. As such, the Field Office Director noted in her decision that the applicant’s explanation for failing to attend school was not reasonable. *See Decision of the Field Office Director*, dated March 26, 2012. The Field Office Director also noted that the qualifying spouse picked the applicant up at the airport and took her to Nevada and that the applicant had made no living arrangements in California. No additional evidence or explanation was provided regarding these facts on appeal. Further, aside from assertions by the applicant, her attorney and the qualifying spouse, the record includes no objective documentary evidence to substantiate the assertions that the applicant intended to study in the United States. Although assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. 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)). As the applicant does not provide any evidence to demonstrate her admissibility, the applicant has not overcome her burden and is therefore inadmissible.

Section 212(i) of the Act provides, in pertinent part:

- (1) 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.

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 husband 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-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 qualifying spouse describes the emotional, educational and medical hardships that their child would face, whether separated from the applicant or as a result of the qualifying spouse's relocation to India. However, the record does not provide little detail regarding how their son's hardships will affect the qualifying spouse, other than to indicate that he becomes sad when thinking about not being a part of their son's day-to-day life. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to their child will not be separately considered, except as it may affect her spouse.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of his separation from her. The qualifying spouse, in his letter, states that he and their family would experience financial, emotional and medical hardships upon separation. With regard to his financial hardships, the applicant's spouse indicates that travel to India would be burdensome due to the cost of travel and his simultaneous necessity to also send money to the applicant in India. However, the record does not address whether the applicant could obtain employment in India. She holds a degree in electrical engineering from an Indian academic institution, which could potentially alleviate some of the qualifying spouse's financial burden. Further, the qualifying spouse asserts that if their child were to remain with him in the United States, he would be unable to pay for a babysitter. Similarly, he indicates that he has financial obligations in the United States, including a mortgage and car payment, and it would be difficult for him to make regular payments without the help of the applicant. While the record contains financial information reflecting the qualifying spouse's income and some of his expenses, the record does not clearly demonstrate that he would be unable to afford child care and manage his current financial responsibilities if he remains in the United States. Moreover, there is no evidence in the record regarding the cost of child care in Nevada, where the applicant and qualifying spouse currently live, and whether such cost would be prohibitive given the qualifying spouse's income and expenses.

The applicant's spouse also discusses his emotional hardships upon separation from the applicant. He indicates that the applicant is his best friend, life partner, and soul mate and feels that his life would mean nothing without her. The record also contains a May 2012 handwritten note from his doctor indicating that the applicant's spouse is "being seen for psychiatric services and therapy due to his current stresses regarding his wife's status." Further, the record consists of a voided prescription for the qualifying spouse for anxiety medication and another prescription for Ambien. While it appears that the applicant's spouse is experiencing emotional hardships, the extent of his difficulties is unclear. The record lacks detail regarding the specific emotional and psychological hardships that the qualifying spouse is experiencing or could experience upon separation. Though the record contains documentation of the qualifying spouse's stress, the evidence provided fails to

specifically address how the qualifying spouse's emotional and psychological hardships rise beyond the ordinary hardships associated with separation.

The qualifying spouse also asserts that he will experience medical hardships upon separation from his wife because he has a family history of medical problems; the record includes documentation demonstrating that his father has suffered with heart disease, hypertension and diabetes. The applicant encourages him to "exercise and eat healthy." He also states that the "stress and disappointment" of being away from the applicant and their child will result in his cholesterol rising, and that, combined with his weight and sugar levels, would put him at risk for a heart attack. The record also contains documentation regarding the qualifying spouse's medical condition, including laboratory results and a letter from a medical center diagnosing him with hyperlipidemia and glucose intolerance. However, 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. As such, the applicant failed to provide sufficient documentation to show that the qualifying spouse's financial, emotional and medical hardships, considered in their cumulative effect, constitute hardship beyond the common results of removal.

The AAO also finds that the applicant has not met her burden of showing that the qualifying spouse, a native of India, would suffer extreme hardship if he relocated to India to live with the applicant. The applicant's spouse states that he and his family would suffer financial and medical hardships, as well as safety concerns, if they relocated to India. With regard to the financial hardships, the applicant's spouse contends that he would lose his current employment in the United States, it would be very difficult to find a job in his current field with his salary in India, and it would be a challenge to meet his family's basic needs in India. However, the record does not contain documentation to support his assertions. The qualifying spouse also indicates that he currently has healthcare benefits, which he would also lose if he returned to India, and that medical care in India is extremely expensive. He states that he would not be able to afford medical care, which would put him at risk given his health issues. Additionally, he contends that, as he renounced his Indian citizenship, he would have to pay more for medical costs, as well as for their son's education. However, the record lacks documentation supporting his assertions that a loss in his Indian citizenship would lead to these increased costs. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)).

The applicant's spouse also indicates that he has safety concerns being a U.S. citizen in India, and fears for the safety of himself and family in India. He states that, according to U.S. Department of State travel warnings, India is not safe for American citizens who are frequently victims of criminal activities. However, the U.S. Department of State has not issued a travel warning for India, and the record does not contain a report corroborating the applicant's spouse's claims. Moreover, although the qualifying spouse was granted asylum in the United States, he does not indicate that he fears returning for reasons related to his asylum claim. Further, the applicant has been in the United State for a little over four years and has lived most of her life in India; and the record does not describe problems that she has had living there. Even were the AAO to take notice of general conditions in

(b)(6)

Page 7

India, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by adverse conditions there. The current record does not establish that the qualifying spouse would experience extreme hardship as a result of his relocation to India.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her U.S. citizen spouse 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.