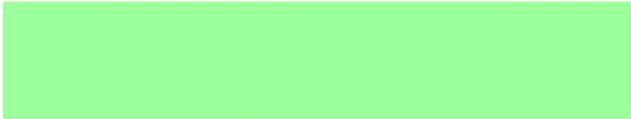




U.S. Citizenship  
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Services

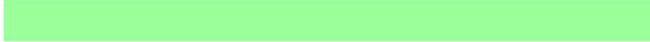
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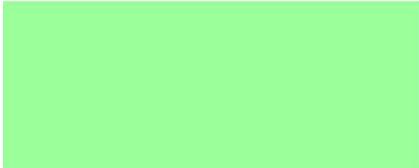
DATE: OFFICE: DETROIT, MICHIGAN

FILE: 

IN RE: Applicant: 

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 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 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, Detroit, Michigan, and 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 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 procured admission to the United States through willful misrepresentation. The applicant is the spouse of a lawful permanent resident and is the derivative beneficiary of her spouse's approved Petition for Alien Worker (Form I-140). The applicant, through counsel, contests the finding of inadmissibility, and 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 reside with her husband in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated February 7, 2012.

On appeal, counsel asserts the applicant is not inadmissible to the United States as she did not commit fraud. In the alternative, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) committed errors of law and fact in denying the applicant's waiver application, as she provided sufficient evidence demonstrating that her spouse will suffer extreme financial and psychological hardship in her absence. *See Form I-290B, Notice of Appeal or Motion*, dated February 15, 2012.

The record includes, but is not limited to: briefs and correspondence from current and previous counsel; letters of support; identity, psychological, medical, employment, and financial documents; and photographs. 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) In general.- 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.

...

(iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "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.*

The intent to deceive, however, 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 relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995).

In *Kungys v. United States*, 485 U.S. 759, 771-772 (1988), the Supreme Court found that a concealment or misrepresentation is material when clear, unequivocal, and convincing evidence shows that the misrepresentation is “predictably capable of affecting, that is, having a natural tendency to affect, the official decision.” Additionally, a misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. 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, 448-449 (AG 1961).

The Field Office Director found the applicant inadmissible for having presented herself for inspection by U.S. immigration officials and subsequently being admitted upon posing as the spouse of an unknown individual to whom she had paid \$500 to assist her entry into the United States.

On appeal, counsel asserts the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, because she has consistently maintained that she “crossed the [Canada-U.S.] border in a vehicle with three other individuals (one driver and two other passengers)”;

“only the driver spoke with the inspection officer” at the U.S. border, and “[s]he did not say anything nor was she asked any questions”;

and she “did not provide any documents or paperwork to either the driver or the inspection officer.” *Brief in Support of Appeal*, dated March 19, 2013. Counsel further asserts that “silence or failure to volunteer information does not, in and of itself, constitute material misrepresentation for purposes of determining inadmissibility because it doesn’t establish a ‘conscious concealment.’” (citing *Matter of G-*, 6 I&N Dec.9 (BIA 1953) and the USCIS Adjudicator’s Field Manual (AFM) § 40.6.2(c)(1)(B)(ii)). *Id.*

The AAO finds the record to indicate that, during her January 24, 2013 adjustment interview, the applicant acknowledged she knew she needed a visa to be admitted into the United States. The record also indicates the applicant claimed she never applied for a visa through proper channels. Also at the 2013 interview, the record indicates the applicant stated she did not pay the individual who posed as her spouse upon entry into Canada via a flight from India, then drove her from

Canada to the United States and presented documents on her behalf at an unknown U.S. port of entry. However, the record indicates that nearly three years earlier, during her May 14, 2010 adjustment interview, the applicant acknowledged paying \$500 to an individual to pose as her spouse, and this person presented documents on her behalf, resulting in her admission to the United States. Where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The AAO notes the record does not include objective evidence to explain these inconsistencies.

The record reflects that the applicant's inconsistent testimony concerning whether she actually paid an individual to assist her entry into the United States was material as she was excludable on the true facts: she was an intending immigrant without properly obtained documentation to enter the United States. Additionally, her willful silence upon the presentation of documents on her behalf by the individual who was not her actual spouse was a material misrepresentation, as she was excludable on the true facts as an intending immigrant without proper documentation. The record reflects she was present in the van when U.S. immigration officials inspected the documents. Although she may not have been directly asked questions concerning the documents, her silence tended to shut off a line of inquiry that was relevant to her eligibility to be admitted to the United States and might well have resulted in the proper determination that she be excluded, as she did not have proper documentation to enter the United States as an intending immigrant. Moreover, the AAO notes that the AFM § 40.6.2(c)(1)(B)(vi) provides:

If the misrepresentation is made by the applicant's attorney or agent, the applicant will be responsible for this misrepresentation, if it is established that the alien was aware of the action taken by the representative in furtherance of the alien's application. This includes oral misrepresentations made at the border upon entry by an aider of the alien's illegal entry.

*See also* 9 FAM 40.63 N4.5.

Although the applicant denies knowledge of the documents presented on her behalf, the record reflects that she knew she lacked the documents that would permit her to be admitted into the United States, she knew there was a proper procedure for obtaining a visa to enter the United States and she did not pursue this procedure. Accordingly, the record reflects that the applicant was aware of the action taken by the individual posing as her spouse when he presented documents at the U.S. port of entry to facilitate her admission. The AAO therefore finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

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

- (1) The Attorney General [now 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.

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. Hardship to the applicant and her adult sons can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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 BIA 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 BIA 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 BIA 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 *Id.* at 568; *In re 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 BIA 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 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. I.N.S.*, 138 F.3d 1292, 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.

Counsel contends the applicant’s spouse would suffer extreme emotional, psychological, and financial hardship in the applicant’s absence as: they have been residing in the United States together for almost 14 years; the applicant’s immigration matters have caused her spouse stress and anxiety; her spouse worries about how he will support their family, including their adult sons, on his income alone; and their combined income supports their family and allows them to provide charitable donations to civic and religious-based organizations domestically and in India. The applicant further indicates: if she returns to India, her “family will be helpless and in disarray”; she would be unable to find a job, as she has “no training and no learned skills”; and their adult sons, though educated, have been unable to find work there. The applicant’s spouse also indicates: he and the applicant have been married for 23 years, and they “have supported each other through thick and thin”; he feels hopeless and constantly sad and anxious; he does not “know how [he] will continue on [his] own”; the applicant would need his support, as she would be “forced to return to India more than a decade later, without a job and no place to live”; given “India’s economy and lack of employment opportunities . . . she will be helpless”; she has been working for the past 10 years at a [REDACTED] and with their combined income, they “are able to support each other” and send money to his brother to financially support their adult sons, who live with him in India.

The record establishes licensed psychologist [REDACTED] has diagnosed the applicant’s spouse with anxiety disorder and depressive disorder. Also, she has recommended that the applicant and her spouse “would benefit from therapy in order to attain a positive outcome,” and “[i]ndividual counseling and cognitive behavioral therapy will aid [the applicant’s spouse to] decrease negative thoughts and behaviors, and find positive alternatives which will lessen the symptoms” related to the applicant’s immigration matters. *See Psychological Evaluation*, March 7, 2013. While the AAO acknowledges the findings made in the

psychological evaluation, the AAO finds the record does not establish that the applicant's spouse is experiencing hardship beyond what is normally experienced by family members of inadmissible individuals.

Additionally, the record demonstrates that the applicant has been under the care of licensed physician [REDACTED] since 2004 for chronic anemia, arthritis, cephalgia, cervicalgia, and lumbar pain; dyslipidemia; and anxiety disorder. The record also demonstrates she was prescribed pain medication and physical therapy in 2012 for chronic back and neck pain. *See Medical Letter*, dated October 18, 2012. However, the record does not include a discussion of the impact that her medical conditions have on her qualifying relative in this case, her spouse.

Further, the record demonstrates the applicant's spouse has been employed with [REDACTED] since March 27, 2009, the applicant and he maintain their residence with [REDACTED] and they send remittances to India. The AAO finds the record is unclear concerning their current household income. The most recent tax filing in the record is from 2009, almost three years prior to the filing of the applicant's appeal; the employment letter submitted on behalf of the applicant's spouse does not mention his income; and the applicant's Form G-325A, Biographic Information (Form G-325A) indicates she was employed by [REDACTED] from 2001 until February 2012. *See Employment Letter*, dated March 19, 2013; *see also Form G-325A*, dated March 7, 2012. Accordingly, the AAO finds the record is not sufficient to establish the applicant's spouse's financial obligations or his inability to meet those obligations in the applicant's absence. Moreover, the record does not include evidence of employment or labor conditions in India, other than what has been self-reported, to support assertions that the applicant could not financially contribute to their family and to show that their sons cannot support themselves. 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 is thus unable to conclude the record establishes the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant's spouse would suffer extreme hardship upon relocation to India as: he and the applicant "would both be without a job or a place to live"; he "had to sell most of his property before [he] and [the applicant] left India"; his brother, with whom their sons live, would be unable to care for the entire family; he has a job in the United States with an employer "who respects him and loves him" and for whom he has worked for several years; and he would lose his permanent resident status. The applicant further indicates her spouse became a lawful permanent resident "only a little over a year ago and has to maintain his green card." Additionally, the applicant's spouse indicates: if he were to move to India, he and his family "would not be able to survive" and would "suffer tremendous financial and emotional hardship";

he and the applicant would be jobless and he would not have the same employment opportunities as in the United States, because in India one needs connections and money to obtain a position; when he left India he needed to sell his family's house to meet his many expenses; he fears that without an income their sons will be homeless; and he is very depressed by the "thought of moving to India and fac[ing] unemployment, [with] no place to live."

Although the applicant's spouse may experience some hardship upon relocating to India to be with the applicant, the AAO finds the record does not establish the applicant's spouse's hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record establishes that although the applicant's spouse became a lawful permanent resident on November 21, 2011, he maintains close familial ties in India: their adult sons and his brother. Also, he is a national and a citizen of India and should have reduced difficulty in acclimating to the culture and society there. Further, the record does not include evidence of employment opportunities for bakers or of economic, political, or social conditions in India and their impact on the applicant's spouse other than what has been self-reported.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience upon relocation to India, but finds that even when evidence of this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her lawful permanent resident 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.