

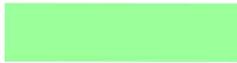
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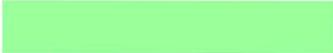
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **MAY 10 2013**

Office: CHICAGO

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 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 Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native and citizen of India who was found inadmissible for having misrepresented her employment history with respect to a labor certification and subsequent application for Adjustment of Status. The applicant was thus 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 attempted to procure permanent residence by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse

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. *Decision of the Field Office Director*, dated July 7, 2012.

On appeal counsel for the applicant asserts the Field Office Director used information from a withdrawn I-140 petition that should not have been used since it was a closed petition, and did not consider all the factors in determining extreme hardship. With the appeal counsel submits a brief and divorce documentation for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

....

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

Section 212(i) of the Act provides:

- (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 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 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.

The record reflects that a Form I-140, Immigrant Petition for Alien Worker was filed on behalf of the applicant in December 2003 and she concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In March 2009 a Form I-130 Petition for Alien Relative was filed on the applicant's behalf and she concurrently filed a Form I-485 based on that petition. The applicant was interviewed for the Form I-130 in June 2009. A notice of intent to deny the I-140 petition was issued to [REDACTED] in March 2010, but no rebuttal was received. A request for evidence sent to the applicant in August 2011 for an I-601 waiver application cited her inadmissibility. The applicant's Form I-140 was denied in April 2010 and the employment-based I-485 application denied in June 2010.

Regarding the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, counsel contends the applicant had orally withdrawn and abandoned her I-140 petition at the time she was interviewed for the relative petition filed by her spouse thus the Service had no right to review the prior petition and question the documentation filed in support of it. Counsel contends that the Service denied the I-140 petition because the employer had failed to respond to a notice of intent to deny nearly one year after the applicant's interview for her family-based adjustment. Counsel further asserts no benefit was received as a result of alleged misrepresentation nor sought after the applicant's I-130 interview. In her statement the applicant indicated she did not know a letter from her previous employer was not true, but due to passage of time could not question the determination.

As noted above, section 212(a)(6)(C)(i) of the Act states that 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 principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

The record shows that on April 2001 the applicant signed, under penalty of perjury, an Application for Alien Employment Certification detailing a job and work experience in India from 1993 to 1998 and in December 2003 signed, also under penalty of perjury, a form G-325A Biographic Information with the same detail. A USCIS investigation revealed that a letter verifying the employment in India was fraudulent and that the business operation there denied that the applicant had ever worked at the business where she claimed to acquire the requisite experience for a labor certification. Counsel contends applicant was only issued a request for evidence and denial after her I-130 interview, and the applicant states she needed more time to respond as she believed the employer letter to be true. However, no evidence has been produced to dispute the finding that the employment letter was fraudulent. Further, the applicant had the duty and the responsibility to review all forms and statements prior to signing and be aware of evidence submitted on her behalf. As such, the AAO

concur with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 spouse is the only qualifying relative 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.

Counsel asserts that in denying the wavier application USCIS assumes the applicant's family would provide for her if she were to relocate to India. Counsel notes the applicant's spouse was born in Pakistan, has no ties to India, and would have no family assistance there. Counsel further asserts the spouse's only child was born in the United States and is still a minor for whom the spouse is responsible for child support. Should he depart the United States he would be unable to meet that duty, but if he remained he would have those costs plus costs to support the applicant in India and travel expenses to be with her. Counsel also contends the spouse would lose social security and medical entitlement benefits in the United States. Counsel further contends country reports cite human rights violations in India with no guarantee of protection to U.S citizens and that if he were not there he would worry about the applicant.

The applicant's U.S. citizen spouse asserts he looked forward to the applicant caring for him as he gets older and that at his age he could not find employment if he relocated abroad to be with her and would become a burden.

The AAO finds the record fails to establish that the applicant's spouse will experience extreme hardship as a consequence of being separated from the applicant. The applicant and her spouse state he needs the applicant's assistance as he grows older and counsel states the applicant's spouse would have financial costs in the United States and have to support the applicant in India. However, the record contains no detail or supporting evidence concerning any emotional hardship the applicant's spouse will experience due to separation from the applicant, or of any health problems experienced by the applicant's spouse which require the applicant's presence in the United States. 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)). Further, no documentation has been provided on appeal establishing the applicant and her spouse's current incomes, expenses, assets, liabilities, and overall financial situation to establish that without the applicant her spouse will experience hardship, nor has it been established that the applicant will be unable to obtain employment in India, thus ameliorating the hardships referenced by the applicant's spouse with

respect to having to support his son in the United States while providing for the applicant the India. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility.

The AAO also finds the record has failed to establish the applicant's spouse will experience extreme hardship if he were to relocate abroad to reside with the applicant. The applicant's spouse contends that he will experience hardship were he to relocate abroad. Counsel asserts that the applicant's children may not be able to support her and that her spouse will have no other family support or benefits from the United States. Counsel also asserts that county information cites human rights violations in India. The record, however, contains no evidence that the applicant and her spouse would be unable to support themselves in India or that the applicant's spouse would not have access to health care. Country reports cited by counsel describe generalized country conditions and do 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.

Counsel asserts the spouse's U.S.-born child from his prior marriage is a minor for whom the spouse is responsible for child support, but he would be unable to provide this support if he relocated to reside with the applicant. Although the divorce decree states the spouse is to pay child support, no documentation has been submitted to the record to establish that the spouse makes regular support payments. Further, the applicant's spouse has made no contention that separation from his child would cause him to suffer hardship. The evidence on the record does not establish that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to remain in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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.