

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



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE:

MAY 21 2013

OFFICE: PORTLAND, OR

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon, 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 has resided in the United States since June 5, 1994, when he presented a false identity to immigration officials and was paroled into the United States for pursuit of an asylum application. He 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 spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. 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 U.S. Citizen spouse and step-children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative. *See Decision of Field Office Director* dated October 1, 2012. The Field Office Director also found that, given the applicant's immigration history and multiple misrepresentations, he did not merit a favorable exercise of discretion and denied the application accordingly. *Id.*

On appeal, counsel submits a statement in the Form I-290B, Notice of Appeal or Motion. Therein, counsel asserts that the Field Office Director erred by considering the applicant's asylum application in adjudication of the Form I-601 waiver, that the Field Office Director should have considered the hardship to the qualifying relative of rearing and raising three children alone, and that the applicant's positive equities were not considered. Though counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days, no further documentation was submitted on appeal. The record is therefore, considered complete.

The record includes, but is not limited to, statements from the applicant and his spouse, letters from family, friends, and employers, letters from a physician and a licensed professional counselor, financial documents, documentation of immigration proceedings, articles on country conditions in India, other applications and petitions, evidence of birth, marriage, residence, and citizenship, 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) 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:

- (1) The [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.

In the present case, the record reflects that when the applicant arrived in the United States, he attested under oath that his true and correct name was "[REDACTED]" and that he was born on [REDACTED] 1966, when he now asserts his name is "[REDACTED]" and he was born on [REDACTED] 1966. He also misrepresented his date, place and manner of entry into the United States on his asylum applications. Inadmissibility is not contested on appeal. The AAO therefore finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. Citizen spouse.

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. 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 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 spouse contends she would experience extreme difficulties upon relocation to India because of her family ties, cultural and language issues, and adverse country conditions in India. She asserts she would have to abandon her old, ailing, widowed mother and her three children if she moved. A letter from her youngest child is submitted in support. The spouse moreover claims in India she would be subject to poor health care facilities, a bad economy, and unfavorable social conditions. The applicant’s spouse states that she has never traveled, and, as a native of the United States, she has no connections in India apart from her spouse. A copy of the CIA world factbook on India is submitted in support.

The spouse also claims she would suffer emotional, financial, and family-related hardship upon separation from the applicant. The spouse explains she is emotionally attached and dependent on the applicant, especially given the abuse she experienced with her first spouse. A licensed professional counselor indicates in a letter that the spouse has a history of anxiety and depression, and that the spouse reported an increased level of those issues since learning the applicant was at

risk of deportation. The counselor adds that the spouse's ability to sleep, concentrate at work, her chronic pain, and her physical health has been affected. The spouse's physician reports in a letter that she has a diagnosis of depression and fibromyalgia, and that she reports her symptomatology has increased resulting in increased narcotic usage, and decreased ability to function from an employment perspective. The applicant's spouse adds that the applicant has provided emotional support to her three children, and that they would be devastated to lose him in their daily lives. Counsel indicates in the brief filed with the I-601 application that the applicant also helps support his spouse and her three children financially, and stresses the psychological and emotional impact of separation on the children.

The record, however, does not contain sufficient evidence to support assertions of hardship upon separation from the applicant. The applicant's spouse claims she has experienced increased emotional difficulties since learning of the applicant's risk of removal. However, the record reflects that the applicant was ordered removed by an immigration judge in September 2008, and that he married the spouse in January 2009. The applicant has also been in immigration proceedings before the Board of Immigration Appeals and the Ninth Circuit Court of Appeals since the beginning of their marriage. Furthermore, the spouse's exacerbated symptoms, as stated on the March, 2011 letters from the counselor and her physician, appear to be reported by the spouse, and are not the results of these practitioners' evaluations.¹ The applicant also does not explain why the spouse experienced emotional difficulties due to the risk of removal in 2011, which is when the counselor's and the physician's letters were written, as opposed to other times, such as when she and the applicant married after his 2008 order of removal, or when the BIA dismissed the applicant's appeal in November 2009. Given this lack of explanation and specificity, the AAO can only give limited weight to these assertions. Additionally, although the spouse claims her children rely on the applicant for emotional support, the record reflects that they are 25, 23, and 18 years of age, and that the elder two do not live with the applicant and his spouse. Contrary to counsel's assertions that the spouse will suffer hardship rearing and raising the children without the applicant present, the record indicates that they are of adult age. The applicant submits no evidence demonstrating that given their ages, the spouse needs assistance rearing and raising them. Moreover, the record reflects that after the applicant filed the appeal, noting that his spouse was laid off, she has since begun working again for the same employer.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would

¹ "[redacted] came to counseling reporting an increased level of depression and anxiety since learning her husband [redacted] was in jeopardy of being deported back to India." *Letter from [redacted]*, March 28, 2011. "She now informs me that her husband is potentially being deported, and as such her symptomatology has significantly increased..." *Letter from [redacted]*, March 29, 2011.

suffer extreme hardship if the waiver application is denied and the applicant returns to India without his spouse.

The applicant has also failed to demonstrate that his spouse would experience extreme hardship upon relocation to India. Although the spouse claims she could not leave her old, ailing mother, and that her siblings could not care for her, the applicant submits no evidence in support, such as letters from the mother's physician and from the siblings. Although the spouse'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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the applicant has not shown that his spouse has medical conditions which could not be treated in India, or that, given her skills and work experience, she could not obtain adequate employment there.

The record reflects that the spouse was born in the United States, has family ties here, and may have some difficulties adjusting to life and country conditions in India. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, family-related or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates 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 his U.S. Citizen spouse as required under section 212(i) of the Act.

Moreover, even if the applicant had demonstrated that his spouse would experience extreme hardship as required by section 212(i) of the Act, the applicant has not established that he would merit a favorable exercise of discretion. Counsel and the applicant contend that the applicant only made one misrepresentation more than 15 years ago, when he was paroled into the United States. However, the record contains other instances where the applicant did not disclose the truth to immigration officials. After presenting a false identity to immigration officials upon his New York entry on June 5, 1994, the applicant failed to appear at an exclusion hearing. The applicant subsequently submitted an asylum application with a false date of birth, also falsely indicating that

(b)(6)

Page 7

he entered the United States on June 6, 1994, at Blaine, Washington, not on June 5, 1994 at New York. The applicant's immigration history was thoroughly discussed in the Field Office Director's decision. Furthermore, even with consideration of the positive factors counsel mentions, such as the applicant's payment of taxes and employment in the United States, some of which was without authorization, his marriage to a U.S. Citizen, his residence of long duration in the United States, and his lack of a criminal history, the applicant's immigration violations are such that he does not warrant a favorable exercise of discretion even if extreme hardship were shown.

In proceedings for a 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.