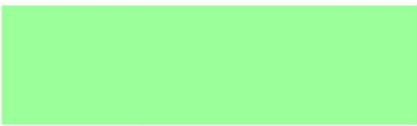


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090

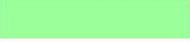


U.S. Citizenship  
and Immigration  
Services

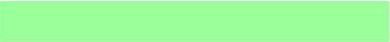


DATE: **NOV 06 2013**

OFFICE: LAS VEGAS, NV

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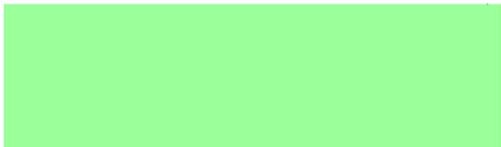
IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Las Vegas, Nevada, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, but the AAO's prior decision will be affirmed. The waiver application will remain denied.

The applicant is a native and citizen of India who has resided in the United States since May 28, 2002, when he was admitted pursuant to a nonimmigrant visa. 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 a visa, other documentation, admission to the United States, or another benefit under the Act 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 children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 18, 2012.

The AAO dismissed a subsequent appeal, finding that the applicant did not establish that his qualifying relative would experience extreme hardship in the scenarios of separation and relocation to India. *See Decision of AAO*, dated March 7, 2013. The AAO affirmed its decision on motion. *See AAO Decision on motion*, dated May 29, 2013.

On this second motion, counsel submits a brief in support, a statement from the applicant's spouse, a letter from the spouse's physician, medical records, and documentation on education in India. In the brief, counsel contends that the record now establishes that the applicant's spouse would be unable to work in the United States or in India due to her medical condition. Counsel moreover asserts that the spouse will experience extreme hardship upon relocation to India because of her inability to earn money, and her children's educational and other adjustment issues.

The record includes, but is not limited to, the documents listed above, briefs in support, documentation of birth, marriage, divorce, residence, and citizenship, statements from the applicant's spouse, articles on Indian visas, other documentation on country conditions in India, medical records, other applications and petitions, and photographs. The entire record was reviewed and considered in rendering a decision on this second motion.

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 the applicant obtained L-1 nonimmigrant status by asserting that the I-129 Petitioner, [REDACTED] was the subsidiary of the foreign employer, [REDACTED] when in fact the applicant, not [REDACTED] owned the I-129 Petitioner. Inadmissibility is not contested on this second motion. The AAO therefore affirms that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a benefit under the Act through fraud or misrepresentation. The AAO moreover confirms its additional finding, that the applicant is also inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver under section 212(a)(9)(B)(v) of the Act. *See AAO Decision*, March 7, 2013.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide 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.

On this second motion, counsel claims the applicant’s spouse cannot work due to her medical conditions. An updated letter from the spouse’s physician is submitted in support. Therein, the physician indicates the spouse suffers from persistent neck pain, and that according to a 2010 x-ray, she has disc narrowing which could suggest impingement. The physician concludes that the pain will prevent the spouse from reaching, pulling, or pushing, or lifting anything over 10 pounds. The physician adds that her limited range of neck motion will make computer work and writing difficult or impossible for any length of time. Counsel asserts that the spouse cannot care for herself and her children financially without the applicant present, nor can she cope with her children’s emotional and developmental issues alone. The spouse adds that she would lose her house, her business, and her life without the applicant present.

Counsel also asserts that the children will not be able to attend school in India, which will cause the spouse hardship. In support, the applicant submits a letter from the [REDACTED]

[REDACTED] Therein, the vice principal indicates that the elder child cannot be admitted in Class VIII because he does not know Hindi and Punjabi. A 2014 secondary school curriculum is also submitted on this second motion. Counsel states that the spouse will suffer hardship because instead of her children attending school, she will have to take care of them all day. Counsel explains that her medical condition prevents her from providing adequate care for her children. Counsel adds that expecting the U.S. citizen children to thrive in a foreign land is impossible.

Counsel further contends that the AAO mistakenly assumes the applicant's spouse should, or must, follow the applicant to India simply because she was born there. Counsel asserts that the spouse's position is no different than any other U.S. citizen, and such a discriminatory view should not be permitted. Counsel states that the applicant's spouse cannot work anywhere, given her medical condition, and reiterates that she cannot obtain a work permit to be legally employed in India. Counsel explains that the United States does not allow foreigners to work in the country without proper status, and as such the AAO should not assume that the spouse can work in India. The spouse claims that because she and her children are United States citizens, they do not have a legal right to live in India.

Counsel asserts the AAO discriminates against the applicant's spouse by assuming she should or must follow the applicant to India because she is a native of India. Regardless of a qualifying relative's country of birth, extreme hardship must be analyzed in all applications for waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act. There is no expectation that a qualifying relative must relocate to a foreign country. Adjudicating a waiver of inadmissibility requires an individualized analysis of the specific qualifying relative's claims of extreme hardship in the event of relocation as well as separation. Counsel acknowledges this, noting that a determination of extreme hardship "necessarily depends upon the facts and circumstances peculiar to each case." *Counsel's brief on motion* at 5, citing *Matter of Hwang*, 10 I&N Dec. 448 (BIA 1964). In this case, the spouse's background as an Indian native who lived in India long enough to be familiar with Indian languages and customs, must be considered as facts and circumstances peculiar to the applicant's case. Thus, consideration of these factors is appropriate.

Counsel also asserts the AAO is mistaken in its assumption that the spouse can legally work in India. It is the applicant's burden to provide sufficient supporting evidence for this and other assertions. 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). In this case, the applicant has failed to submit any additional evidence to demonstrate that his spouse, a native of India, is precluded from options which will allow her to live and work in India. Without any additional evidence on this point, the AAO cannot conclude the applicant met his burden of proof in this specific matter. Moreover, the applicant has not supplemented the record with evidence indicating he would be unable to earn sufficient income in India to support himself and his family. Although these

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).

As stated in prior decisions, the AAO concurs that relocation to India would entail some hardship. The applicant has additionally submitted evidence on motion indicating his elder child will have difficulties enrolling in school due to his lack of Hindi language skills. However, the record does not contain sufficient documentation establishing 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 financial, educational, or other impacts of relocation on the applicant’s spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot find that the applicant’s spouse would experience extreme hardship if the waiver application is denied and she relocates to India.

As on appeal and on motion, the record contains sufficient evidence demonstrating that the applicant’s spouse experiences some medical difficulties, and that she may have to limit her daily activities because of possible nerve impingement. The updated letter from the spouse’s physician provides more details on the spouse’s limitations. However, as noted in the AAO’s prior decisions, the record still contains no evidence on the applicant’s financial contributions or the family’s household expenses to demonstrate that his spouse would be unable to meet their financial obligations, including the mortgage, without the applicant present. As on motion, the AAO notes that the applicant has not supplemented the record with evidence to show that he would be unable to contribute financially from India. The applicant has also failed to provide information on any other assistance the applicant provides with respect to his spouse’s physical limitations. Without additional evidence, the AAO cannot evaluate the degree of financial hardship, if any, the applicant’s spouse will face.

The AAO acknowledges that separation from the applicant will entail hardship related to raising her two children as well as medical difficulties. However, the record still contains insufficient evidence to demonstrate that the financial, medical, emotional or other impacts of separation on the spouse are cumulatively above and beyond the hardships commonly experienced. The AAO therefore finds the applicant has not shown that his spouse would suffer extreme hardship if the waiver application is denied and the applicant returns to India without her.

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 sections 212(i) and 212(a)(9)(B)(v) 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 a waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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, although the motion is granted, the prior AAO decision is affirmed.

**ORDER:** The motion is granted, but the prior AAO decision is affirmed. The waiver application remains denied.