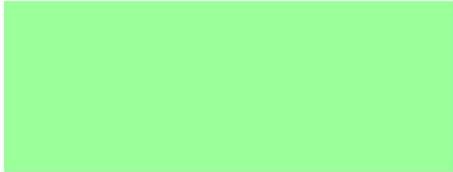




U.S. Citizenship  
and Immigration  
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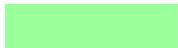
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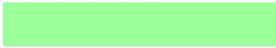
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Office: NEW DELHI, INDIA

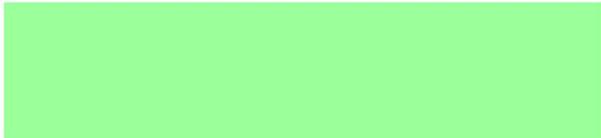
FILE: 

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 (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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, New Delhi, India. An appeal of the denial was rejected by the Administrative Appeals Office (AAO). On motion, the matter will be reopened, and the appeal will be dismissed.

The record reflects that 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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is married to a lawful permanent resident of the United States and 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 spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 9, 2012.

On May 8, 2012, the applicant, through counsel filed a Form I-290B, Notice of Appeal or Motion (Form I-290B). Counsel signed the Form I-290B as the applicant's attorney, but the record did not contain a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative (Form G-28), signed by both counsel and the applicant. On November 1, 2012, the AAO sent a facsimile transmission to the applicant's attorney to advise the attorney of the requirement to file a new Form G-28. Although the applicant's attorney complied with the AAO request, the attorney's response was not properly added to the record. The required Form G-28 is now in the record, and the AAO moves to reopen the appeal on its own motion.

The record contains the following documentation: briefs filed by the applicant's attorney in support of Forms I-601 and I-290B; statements from the applicant, the applicant's spouse, the applicant's children, the applicant's siblings, the mother of the applicant's spouse, and siblings of the applicant's spouse; psychological evaluations of the applicant's spouse; financial documentation; country conditions reports; and medical documentation for the mother of the applicant's spouse. 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 record reflects that the applicant misrepresented material facts during her interview for an employment-based immigrant visa at the U.S. Consulate in Mumbai, India on February 7, 2005. According to her sworn statement received September 9, 2011, the applicant states that in 2003 she was "being sponsored to immigrate" to the United States through the assistance of an attorney in Georgia, who asked her "to get an employment letter" to be used at the consular interview. The applicant states that when she appeared for her visa interview, the consular officer asked her to

provide salary statements from the resort where she worked, and she was unable to provide those statements.

The record indicates that the U.S. Consulate in Mumbai determined that applicant was unable to verify her claimed work experience as a room-service manager, the resort where she claimed to have worked was closed nine years before the applicant's visa application, and she misrepresented her work experience to appear qualified for immigration benefits to which she would not otherwise have been entitled. The applicant's visa request was denied accordingly under section 212(a)(6)(C)(i) of the Act. The approval of the applicant's Form I-140, Immigrant Petition for Alien Worker subsequently was revoked on February 6, 2008.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. Section 291 of the Act; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). In this particular case, the applicant has failed to meet her burden of showing that she is not inadmissible for the misrepresentation of a material fact in application for an employment-based immigrant visa. The AAO concurs with the Field Office Director's finding that the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act.

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

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 lawful permanent resident 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 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 that the applicant's spouse will suffer financial hardship if the applicant's waiver application is not approved. Counsel states that the applicant's spouse's income in 2011 was

insufficient to support himself, his step-son, and the applicant in India. The record includes copies of two pay slips for the applicant's spouse from March and April 2011, indicating that he worked at [REDACTED], and earned approximately \$680 every two weeks, or \$17,680 per year. There is no other financial documentation included in the file. The record does not include any evidence regarding the applicant's spouse's expenses in the United States, or any evidence of the claimed support that he provides to his step-son or his spouse. Moreover, the record does not indicate whether the applicant's spouse receives financial support from his family members 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)). The evidence in the record is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence.

Counsel states that the applicant's spouse is no longer employed in his position at [REDACTED] and a psychological report indicates that the applicant lost his job in July 2011 because he could not handle the pressure from his work. However, no evidence in the record corroborates statements that the applicant's spouse is no longer employed in the United States.

Counsel also contends that the applicant's spouse will suffer psychological hardship if the applicant's waiver is not approved. Counsel states that the applicant's spouse "has been under treatment by his psychologist," who has been helping him to overcome his depression and anxiety. The record includes two psychological evaluations of the applicant's spouse, dated May 2011 and June 2012. According to the May 2011 report, the applicant's spouse is experiencing "severe psychological and emotional hardships" due to the applicant's immigration situation. The psychologist recommended that the applicant's spouse and son receive psychotherapy to address stress, anxiety and depression, and that the applicant's spouse consult a psychiatrist "to determine the need for psycho-pharmaceutical intervention." The June 2012 report indicates that the applicant's spouse "is suffering from extreme psychological/emotional and financial hardships," and the psychologist strongly recommends psychiatric consultation "to stabilize his condition with the help of psychotropic medication." However, there is no evidence in the record showing that the applicant's spouse followed the psychologist's recommendations.

As noted above the record includes two psychological evaluations prepared by a psychologist within an 11-month period. The record lacks evidence that the applicant's spouse "has been under treatment" by his psychologist, as asserted by counsel. 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).

Additionally, while the record includes several affidavits from relatives regarding the applicant's spouse's emotional hardship, the affidavits contain almost identical language about the applicant's spouse's reaction to the death of his first wife and expressing concern that if the applicant is unable to enter the United States, the applicant's spouse will suffer additional emotional hardship.

Although the AAO is sympathetic to the applicant's family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that psychological hardship of the applicant's spouse and the symptoms he has experienced are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record lacks sufficient evidence demonstrating that the emotional, financial, and other impacts of separation on the applicant's spouse, considered in the aggregate, are above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied.

Counsel contends that the applicant's spouse will suffer hardship if he relocates to India to be with the applicant because his relatives reside in the United States. The record establishes that the applicant's spouse's mother, brother, and four sisters are residing in the United States. Counsel also contends that the conditions in India "are atrocious" and submits newspaper articles about the problems facing India today, conditions in Mumbai, and a terrorist incident in New Delhi. Counsel additionally asserts that the applicant's spouse now is a lawful permanent resident of the United States and that when he immigrated to the United States, he quit his job, sold his house, and "wrapped up his life" in India. The record reflects that the applicant's spouse immigrated to the United States less than two years ago, after having resided in India his whole life, and thus is familiar with the language, customs, and culture of India. Although a majority of his family members reside in the United States, his spouse, the applicant, resides in India.

Counsel contends that the applicant's spouse will be unable to care for his ailing mother if he relocates to India. However, as noted above, the mother of the applicant's spouse has five children living in the United States. There is no evidence in the record that the siblings of the applicant's spouse would be unable to care for his mother in his absence. Counsel states that in Hindu families, sons must take care of their parents, and the record includes an article from the [REDACTED] corroborating his statement. However, as noted above, the applicant's spouse has a brother residing in the United States who presumably would be able to take care of their ailing mother in accordance with their cultural norms.

Based on the evidence in the record, considered in the aggregate, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to India in order to reside with her.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected disruptions and difficulties arising whenever a spouse is removed from the United States or refused admission. Although the AAO is not

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*NON-PRECEDENT DECISION*

Page 7

insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.