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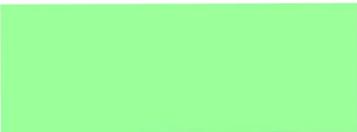
DATE: **DEC 12 2014** OFFICE: NEW DELHI, INDIA

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 waiver application was denied by the Field Office Director, New Delhi, India, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the appeal will remain dismissed.

The applicant is a native and citizen of India who applied for a non-immigrant visa under a false identity and used that visa to procure admission into the United States in 2000. 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 and 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 reside in the United States with his U.S. citizen spouse and three step-daughters.

The Field Office Director concluded that the applicant had failed to establish that a qualifying relative would experience extreme hardship given his inadmissibility, and denied the application accordingly. See *Decision of Field Office Director*, dated June 29, 2012. The AAO dismissed a subsequent appeal, also finding that the applicant had not met his burden of proof in demonstrating that his qualifying relative would experience extreme hardship upon separation and relocation to India. See *AAO Decision*, August 13, 2014.

On motion, counsel contends in a brief that one of the daughters has since become addicted to methamphetamines and heroin, which causes significant emotional and family-related hardship on the spouse, and that the spouse's financial situation has further deteriorated. Letters from family members, medical records, a mortgage statement, and a copy of the spouse's 2013 income tax returns are submitted on motion.

The record includes, but is not limited to: the documents listed above, statements from the applicant, her spouse and their daughters; additional medical documents related to the applicant's daughter; copies of medical treatment records from India for the applicant's spouse's daughter; a 2012 letter from one of the daughter's physicians; copies of business records related to the applicant's spouse's pizza business in Washington state; copies of phone bills, electrical bills, insurance bills and medical costs for the applicant's spouse; educational records related to the applicant's spouse's daughter; documentation of removal proceedings; other applications and petitions; and evidence of birth, marriage, divorce, residence, and citizenship. The entire record was reviewed and considered in rendering a decision on the 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 in 2000 the applicant procured a non-immigrant visa using a false identity and, presented that visa to immigration officials for admission into the United States. Inadmissibility due to fraud or misrepresentation is not contested on appeal or on motion. We therefore affirm that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa and admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility 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.

Counsel asserts on motion that, in addition to the hardship previously discussed, the applicant’s spouse experiences exacerbated emotional, family-related, and financial hardship without the applicant present. Counsel submits updated medical records for one of the daughters to demonstrate that, since the appeal was filed, the daughter has become addicted to methamphetamines and heroin. The other two daughters write that their sister continues to struggle with depression, anxiety, and has chronic pain issues, and that they need the applicant present to help out with her health problems. Previously, the applicant submitted medical records and a 2012 letter from a physician to show that the daughter has endometriosis, anxiety, depression, and chronic pain. The sisters also discuss in their letters how their mom has struggled to raise them given [REDACTED] medical needs, her responsibilities at her pizza business, and her financial situation. With respect to financial hardship, the applicant updates the record with a copy of the spouse’s 2013 U.S. Individual Income Tax Return, which indicates she has an adjusted gross income of \$14,121, and that the pizza business had an ordinary business loss of \$19,757. In

addition, the applicant submits mortgage documents indicating the spouse is late on her mortgage payments, for which she owes approximately \$42,000. Previously, a licensed clinical social worker opined in a 2012 psychological evaluation that the spouse suffers from acute depression.

Counsel asserts on motion that the applicant's spouse cannot take her daughter to India considering her lifetime medical conditions.

The applicant has submitted sufficient evidence to demonstrate that his spouse would experience extreme hardship in the event of continued separation. Although the applicant does not make assertions or provide evidence on motion with respect to the spouse's ability to hire additional employees to help with the pizza business, the applicant has shown that the income his spouse earns from the business is not sufficient to support herself and the two daughters she lists as dependents on her income tax returns. As further evidence of financial difficulties, the mortgage statements show that the applicant's spouse has not made monthly payments on her mortgage in the past calendar year. The applicant has also submitted sufficient documentation establishing that the spouse experiences family-related hardships related to her daughter, who is recovering from heroin and methamphetamine addiction, and who experiences other medical problems, such as endometriosis, pelvic pain, anxiety, and depression.

We therefore find there is sufficient evidence of record to demonstrate that the spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, emotional, or other impacts of continued separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in India without his spouse.

However, the applicant has not submitted sufficient evidence to demonstrate that his spouse would experience similar hardship upon relocation to India, where she was born and raised. Counsel's contention that the daughter's medical conditions will last a lifetime is unsupported by evidence of record. 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, counsel's assertion that the daughter's medical conditions cannot be treated in India is contradicted by evidence, including statements from family members and medical records, that the daughter has traveled to India to received medical care for her conditions.

We note that relocation to India would entail some difficulties. 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, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, we cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to India.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. We 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. 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 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 motion is granted, but the underlying appeal remains dismissed.