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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 22 2014** Office: ATLANTA, GEORGIA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[REDACTED]

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, Atlanta, Georgia, 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 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 attempted to procure admission to the United States through fraud or 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 remain in the United States with his U.S. citizen mother.

In a decision, dated December 11, 2012, the acting field office director stated that the applicant was inadmissible because during a visa interview, he stated to a consular officer that he was not married when in fact he was married. The acting field office director then found that the applicant's waiver application was denied as a matter of law.

On appeal, filed on December 12, 2012 and received by the AAO on December 19, 2013, counsel asserts that the acting field office director erred when he failed to address the hardship evidence presented and when he found that the applicant had not established extreme hardship to his mother as a result of his inadmissibility.

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.

The Department of State Foreign Affairs Manual states at § 40.63 N6:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The Attorney General has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to

be as follows: "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (1) The alien is inadmissible on the true facts; or
- (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he or she be inadmissible." (Matter of S- and B-C, 9 I & N 436, at 447.)

The Foreign Affairs Manual also states that in order for a fact to be considered material, the truth of the matter must lead to a proper finding of inadmissibility. With the exception of the types of cases discussed in 9 FAM 40.63 N6.2-1, if the facts support a finding that the alien is eligible for a visa, the misrepresented fact is not material:

- (1) If an alien were to make a misrepresentation to establish an advantageous immigrant visa (IV) status and it were discovered that the alien was, in truth, entitled to another equally advantageous status, the misrepresentation would not be considered to be material. For example, if the son or daughter of a U.S. citizen were to misrepresent marital status as being unmarried for the purpose of qualifying for first preference status, and was, in fact, married and thus qualified for only third preference consideration, but the third preference was currently available for the alien's state of chargeability, the misrepresentation should not be considered material. If, however, there were a waiting period for third preference applicants in the state of the alien's chargeability or world-wide, the alien must then be found to have sought an unwarranted advantage by means of a willful misrepresentation and the misrepresentation would, therefore, be material...

The record reflects that the applicant applied for a visa in or around June 1998 and during his interview stated to a consular officer that he was unmarried when in fact he was married. The applicant's marital status was determinative of what visa preference the applicant would have received and, hence, how quickly he would have received his visa. The applicant misrepresented his marital status to gain an unwarranted advantage in obtaining his visa, so his marital status was material. At that time unmarried sons or daughters of U.S. citizens had a waiting period of approximately one and a half years until a visa was available and married sons and daughters of U.S. citizens had a waiting period of approximately three and half years. Thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant does not contest his inadmissibility on appeal. The applicant's qualifying relative is his U.S. citizen mother.

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 record of hardship includes: an affidavit from the applicant, an affidavit from the applicant's mother, photographs of the applicant's family, letters from the applicant's siblings, medical documentation concerning the applicant's mother, and country conditions information for India.

The record establishes that the applicant's mother is 70 years old, has two daughters and the applicant living in Georgia, one daughter living in India, and two brothers living in the United States. The record shows that the applicant's mother is widowed and suffers from hypertension and arthritis and requires regular treatment as well as personal care because she is physically weak. However, statements made by the applicant at his adjustment interview and other documentation in the record, including medical documentation from her treating physicians in India, dated March 2012, indicate that the applicant's mother has been living in India since 2007. The record does not include any documentation that the applicant's mother is now or has ever lived in the United States. Similarly, the record lacks medical documentation from the United States indicating that the applicant's mother has a treating physician in the United States and/or what care she requires in the United States.

The applicant's mother claims that she cannot separate from the applicant because she relies on him emotionally and financially. Letters from the applicant's sisters and one of his uncles state that they cannot care for their mother. The record indicates that the applicant, his sister, and his mother have the same address, a hotel the applicant's brother-in-law manages, as their home residence. The record fails to include any financial documentation showing that the applicant is financially supporting his mother or would be able to financially support his mother. To the contrary, the record indicates that the applicant lives on a very limited income. The most current tax documentation in the record indicates that the applicant earned \$2,800 as a desk clerk in 2009. The record also fails to indicate why his mother requires the constant personal care of a live-in caretaker or how the applicant would provide this care if he is also providing for the mother financially.

In regards to relocation, the applicant's mother states that she cannot relocate to India because she and the applicant would have no financial support in India and she feels she can receive better medical treatment in the United States. Again, the record contains no evidence of the applicant's mother ever receiving medical care in the United States. Furthermore, the record indicates that the applicant's mother was residing in India from at least 2007 to 2010 and again in 2012, if not for the whole period from 2007 to 2012. The record fails to show that the applicant's mother was

unable to find the care she required while residing in India. The record does establish that the applicant's sister and wife reside in India. We acknowledge that the record includes a letter from the applicant's sister in India stating that she cannot care for their mother. However, the record fails to show that the applicant's spouse is unwilling and/or unable to care for her. More importantly, the record fails to show that during the applicant's mother's residence in India she was suffering hardship and was unable to find support.

The applicant states that he will not be able to find employment in India because he did not finish his college degree and he would have to accept labor intensive employment where he would not make enough income to support his family. The record also indicates that the applicant's mother is concerned for her health and safety if she were to relocate to India.

The applicant has not submitted documentation to show that he would be unable to find employment to support himself and his mother in India. The record does include documentation regarding country conditions in India, but these reports are very general and do not speak to how someone in the applicant's situation would experience finding employment in India. The State Department Consular Information Sheet does indicate that there is a threat of violence relating to possible terrorist activity in the country and that medical care does reach Western standards in some cases, but is inadequate in rural areas. The record does not include enough detail and specificity as to the applicant and his mother's situation upon relocation to India for the AAO to ascertain what hardships they would face. Furthermore, the only medical evidence in the record is from medical doctors in India. There is no evidence that the applicant's mother is receiving medical treatment in the United States.

The assertions of the applicant and his mother are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. See *Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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 mother as required under section 212(i) of the Act.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. We do note that the applicant's record



includes arrests for two incidents of driving while under the influence and that this criminal record would be taken into consideration during a discretionary analysis.

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.