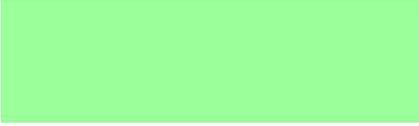




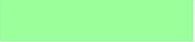
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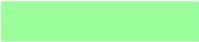
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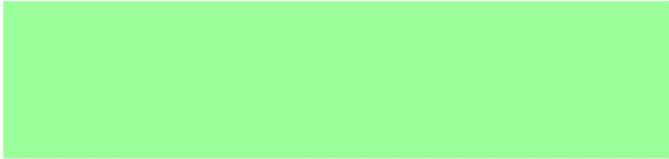
OFFICE: ATLANTA

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IN RE: 

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:

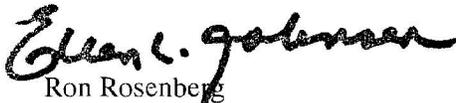


INSTRUCTIONS:

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 Field Office Director, Atlanta, Georgia denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon denial of the applicant's waiver application. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated May 12, 2014.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer emotional and financial hardship upon separation from the applicant. Counsel further asserts that the applicant's spouse cannot seek employment in India due to his Bangladesh heritage and that both he and his child would face discrimination upon relocation.

In support of the waiver application and appeal, the applicant submitted identity documents, an affidavit, an affidavit from the applicant's spouse, a psychological evaluation of the applicant's spouse, an immigration court decision for the applicant's spouse, financial documentation, background information regarding residence and country conditions in India, medical documentation for the applicant and family photographs. The entire record was reviewed and considered in rendering this decision.

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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General (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 applicant, on July 2, 1999, procured a B-2 visa using an Indian passport belonging to another individual. On December 21, 1999, the applicant entered the United States pursuant to these documents.

The applicant asserts that in 1999, her family forced her to go with an unknown man and obtain a visa with a passport not belonging to her. The applicant contends that she misrepresented her identity due to her fear of this man. The applicant further asserts that she was taken by her family and this man to the airport to board a flight to the United States. The applicant indicates that she was met by other individuals who knew this man in New York and put on a plane bound for Atlanta, Georgia, but she ran away upon learning she would be working as a prostitute. The applicant contends that she ran to a [REDACTED], where she was found by her current husband. The applicant's spouse submitted an affidavit also contending that he found the applicant crying in a [REDACTED] parking lot and she moved in with him a year later. Counsel for the applicant asserts that the applicant misrepresented her identity under duress, after her parents sold her to work as a prostitute in the United States. Counsel further asserts that the applicant does not communicate with any members of her family in India because she can never forgive them for selling her.

The record does not contain any other supporting documentation for the applicant's claim that she was forced to obtain a visa and enter the United States based on the presentation of a false identity. Despite assertions that the applicant does not communicate with her family because they sold her into prostitution, the record contains affidavits from the applicant's family members in India. Specifically, in 2002, the applicant's mother attested to an affidavit of the applicant's place and date of birth and sent it to the applicant in 2010. The record further contains letters, from 2011, from the applicant's brother and sister in India, also attesting to the applicant's true identity. The burden is on the applicant to demonstrate by a preponderance of the evidence that she did not willfully misrepresent her identity to gain entry into the United States. *See* Section 291 of the Act, 8 U.S.C. § 1361. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a benefit under the Act. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or misrepresentation.

A waiver of inadmissibility under sections 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 (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 reflects that the applicant is a 45-year-old native and citizen of India. The applicant's spouse is a 48-year-old native of Bangladesh and citizen of the United States. The applicant is currently residing with her spouse and child in [REDACTED] Georgia.

Counsel for the applicant asserts that if the applicant and her child reside in India, the applicant's spouse will suffer emotional hardship and fear for the safety of his family members. The applicant's spouse asserts that he does not see how he could live if his family were to be split apart and that it would be hard on his son to be raised by a single parent. The record contains a psychological evaluation of the applicant's spouse stating that the applicant's spouse worries that his son's light complexion in comparison to his wife's would lead people to believe he was stolen or lead to him being kidnapped or harmed. The applicant's spouse also worries that the Muslims who victimized him in Bangladesh would remember his family name and go after the applicant and their son. The evaluation states that the applicant's spouse fits the criteria for episodes of major depressive disorder, recurrent, severe, without psychotic features. Due to these symptoms, the applicant's spouse has a loss of interest and pleasure in his usual activities and takes medication for sleep impairment, anxiety and depression.

The applicant's spouse submitted his immigration court decision granting him asylum in the United States on August 4, 1998. The decision indicates that the applicant's spouse was victimized by Muslims desiring to acquire his family's property in Bangladesh. There is no indication that the applicant would be targeted on this basis upon her return to India. The record also contains background country conditions concerning child trafficking in India, but there is no indication that the applicant's son, based on his particular physical characteristics, would be singled out for victimization. It is noted that the applicant's son is not a qualifying relative in the context of this application so that any hardship he would suffer will be considered only insofar as it affects the applicant's spouse. As stated, the psychological evaluation of the applicant's spouse states that he has been prescribed medication for his diagnoses. There is no indication that the applicant's spouse has been unable to continue in his daily obligations, including the ownership of multiple businesses, throughout his depressive episodes.

Counsel for the applicant asserts that, upon separation, the applicant's spouse would be faced with the additional burden of supporting his wife and child in India. Counsel contends that there are few opportunities for women to support themselves in India so that, added to the burden of purchasing airfare to visit his family, separation would cause the applicant's spouse financial hardship. The applicant's spouse states that he is a successful businessman and his Form G-28, Biographic Information, indicates that he is the owner of five businesses in the United States. Counsel submitted a letter indicating that the applicant's spouse's 2011 income from his businesses exceeded seventy thousand dollars. There is no indication in the submitted background country condition that the applicant would be unable to procure employment in India. As noted, the applicant's spouse has family members residing in India with who she has

been in communication and there is no information regarding the extent to which they would or could provide her and her son with support. Further, there is no indication that the applicant's spouse would be unable to provide financial assistance to the applicant upon separation. 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)).

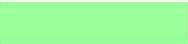
It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to India because he would not be allowed to engage in employment in India on his entry visa and his Bangladesh heritage would prevent him from obtaining the Person of Indian Origin (PIO) card allowing for employment. The applicant's spouse asserts that he would not be allowed to live in India and would only be able to visit his family for three months at a time.

The record contains a page from a non-governmental website stating that anyone married to a person of Indian origin is entitled to a PIO as long as they do not have heritage from countries such as Pakistan or Bangladesh. However, the record also contains a page from the India Bureau of Immigration stating that a person in possession of a passport of any other country except Pakistan, Bangladesh, Afghanistan, Nepal, Bhutan, China, Sri Lanka or any other country specified by the government is eligible for a PIO card if he is a spouse of a citizen of India. As a U.S. citizen, the applicant's spouse is entitled to a U.S. passport and would be eligible for a PIO card, thus allowing for his residence and employment in India.

Counsel for the applicant asserts that the applicant's spouse, as a native of Bangladesh, will be subject to discrimination in India based on the current relationship between the two countries. The record contains background information indicating that India is facing an influx of refugees and illegal immigrants from Bangladesh and there are claims that these individuals pose security threats to India. It is noted that the applicant's spouse is currently a citizen of the United States and would enter India as neither a refugee nor an illegal immigrant. As such, there is no indication that the applicant's spouse, as a legal resident of India, would face the same discrimination as illegal immigrants from his native country.

Counsel for the applicant indicates that the applicant's spouse has been residing in the United States since 1993 and that he was granted asylum in immigration court so that he cannot return to Bangladesh. The record reflects that the applicant's spouse owns five convenience stores in the United States. There is no information concerning whether the applicant's spouse would continue to retain ownership of these stores if he departed from the United States. Counsel does not make any further claims concerning other hardships the applicant's spouse would suffer upon relocation to India.



There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if he relocated to India.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 find that the applicant has failed to establish extreme hardship to her 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 appeal is dismissed.