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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **OCT 30 2014** OFFICE: NEW DELHI

File: [REDACTED]

IN RE: Applicant: [REDACTED]

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 Field Office Director, New Delhi, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant submitted a motion, and we affirmed our previous decision. The matter is now before us on a second motion. The motion is granted, and we affirm our prior decisions.

The applicant is a native and citizen of Pakistan 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 having sought to procure an immigrant visa through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. We dismissed the applicant's appeal and subsequently determined on motion that although the applicant established her U.S. citizen father would experience extreme hardship if he relocated to Pakistan, she did not show his hardship would be extreme if he were to remain in the United States. We affirmed the Field Office Director's decision and our previous decision.

On motion currently before us, counsel asserts that the applicant was erroneously found inadmissible, and in the alternative, her U.S. citizen father would experience extreme hardship because of her inadmissibility. Counsel also asserts we have applied the higher standard of "exceptional and extremely unusual hardship" to the applicant's circumstances rather than the "extreme hardship" standard and cites caselaw addressing these standards. *See Brief Submitted in Support of the Motion to Reopen and Reconsider*, dated December 20, 2013.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has asserted reasons for reconsideration, the motion to reconsider will be granted.

We find counsel's assertions that we incorrectly applied the extreme hardship standard unpersuasive. Counsel provides general statements about relevant caselaw that addresses the "extreme hardship" and "exceptional and extremely unusual hardship" standards without citing specific examples in our analysis of the applicant's hardship factors or demonstrating how our analysis was incorrect.

Counsel also asserts the applicant has "faced more scrutiny" than "typical" immigrant-visa applicants and we should remand her case to the consular office to determine the validity of the applicant's parents' divorce, because the applicant has submitted a new letter verifying the authenticity of their divorce. Counsel, however, provides no support for either assertion. With respect to the divorce certificate in the record and the new letter, where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

In addition to the evidence described in our previous decisions, the record also includes, but is not limited to, a brief in support of the current motion. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

We concluded the evidence submitted by the applicant in support of her appeal and previous motion were insufficient to find that she did not willfully misrepresent a material fact in attempting to procure admission to the United States and therefore the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant, through counsel, continues to contest this finding in the instant motion.

As outlined by the BIA, a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

The record reflects that a Petition for Alien Relative (Form I-130) identifying the applicant as the stepdaughter of a U.S. citizen was approved on March 25, 2004. The record also reflects that during her immigrant-visa interview with a U.S. consular officer on June 27, 2006, the applicant submitted a divorce decree to corroborate her testimony that her father and biological mother were divorced on April [REDACTED] thereby verifying her relationship to her petitioner-stepmother. Subsequently, after a local investigation to determine the validity of the applicant's parents' divorce, U.S. Citizenship and Immigration Services (USCIS) issued a notice of intent to revoke the Form I-130 approval based in part on finding that the divorce decree was fraudulent. Because the applicant did not respond to the notice, USCIS revoked the Form I-130 approval on September 16, 2011.

The record demonstrates the approval on April 8, 2008 of a second Form I-130 filed by the applicant's U.S. citizen father. The record also shows the applicant's waiver application was denied

on June 1, 2012, indicating, in part, the applicant provided a false divorce certificate during her consular interview in 2006. On appeal, the applicant submitted a letter from the [REDACTED] Pakistan stating that the divorce decree is “true and correct.” Based on the record before us, we determined that the validity of the document is unclear and we are not in the position to overrule the determination that the divorce decree is fraudulent.

In support of the current motion, counsel contends the applicant is not accountable for misrepresentations concerning her father’s alleged “sham marriage”; the U.S. government may bring charges against the applicant’s father through denaturalization proceedings; and by not doing so, the U.S. government has abused the immigration process and misapplied the Act. The applicant, however, was found inadmissible because of the misrepresentations she made about her parents’ divorce during her testimony and submission of corroborating documentation at her consular interview, and not because of the marriage between her father and the U.S. citizen who identified her on Form I-130 as a stepdaughter.

Also in support of the current motion, counsel contends the applicant did not commit fraud or willful misrepresentation during the consular interview as her parents were in fact divorced; she told the U.S. consular officer the truth and explained “the discrepancies”; the U.S. government has not provided evidence of a sham marriage or sham divorce; the allegations of fraud are based on the family’s neighbors’ “assumptions and false statements,” without evidence about their identities and how they became aware of the alleged sham divorce; and their testimony, as “opinion testimony by a lay witness,” “should be given much less weight than primary evidence of divorce and [the] applicant’s testimony.” Counsel also contends the applicant has not committed any misrepresentations concerning the I-130 petition filed by her father. As noted previously, the applicant was determined to be inadmissible because of misrepresentations she made about her parents’ divorce during her testimony and submission of corroborating documentation at her 2006 consular interview, unrelated to the I-130 petition filed by her father.

The evidence demonstrates the applicant was advised of the consequences of making misrepresentations during her testimony and submission of corroborating documents at the consular interview to attain an immigrant visa as the stepdaughter of a U.S. citizen. The record establishes the applicant misrepresented her parents’ divorce and presented fraudulent documentation to procure a visa, and her testimony and the presentation of the documentation were both voluntary and deliberate. Her actions indicate she was sufficiently mature to understand the potential immigration-related consequences if it were revealed that her parents were not in fact divorced and she did not have the required relationship with her purported stepmother, the petitioner. We therefore find that the applicant’s misrepresentation of her parents’ divorce in connection with an immigrant-visa application as the stepdaughter of a U.S. citizen was willful as opposed to accidental, inadvertent, or in an honest belief that the facts were otherwise. The Act makes clear that a foreign national must establish admissibility “clearly and beyond doubt.” See section 235(b)(2)(A) of the Act. Based on the foregoing, the applicant is inadmissible and requires a waiver under section 212(i) of the Act.

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

- (1) The Attorney General [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.

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. Hardship to the applicant or her siblings can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father is the only qualifying relative in this case. 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-Morales*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 *Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. INS*, 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.

In support of the applicant’s current motion, counsel contends the applicant’s father is unable to be separated from the applicant because his emotional and medical hardship is “too grave”; he suffers from “a complicated history of diabetes, hyperglycemia, and hypertension”; the stress of the applicant’s immigration matters has “caused his health to deteriorate to dangerous life threatening levels,” resulting in an increase in the dosage of his medications with side effects and more frequent doctor visits, making it harder to visit his family; he has become “emotionally fragile” and his anxiety has led to depression; he has a loss of appetite and difficulty concentrating, decreased energy, sleeplessness, and hopelessness; and he is extremely concerned for his daughters’ safety because it is “extremely dangerous” to live there as single women, and he would “be forced to move” to Pakistan to be with them.

In our previous decisions, we addressed the evidence showing the applicant’s father has been diagnosed with uncontrolled diabetes, hypertension, and diabetic neuropathies and another medical letter identifying his medications and dosage for diabetes mellitus type II and hyperglycemia. However, the record does not include evidence of the applicant’s father’s current mental health or its effect on his medical conditions. 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 unsupported assertions of counsel do not constitute evidence. *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 the record lacks details concerning the severity of the applicant's father's mental wellbeing or evidence of recent treatment or assistance, we are not in the position to reach a different conclusion concerning the severity of his mental-health conditions and any hardships that may be related to these conditions.

In our decision concerning the applicant's previous motion, we determined that the evidence established that the applicant's U.S. citizen father would suffer extreme hardship upon relocation to Pakistan to be with the applicant given his medical diagnoses; conditions in Pakistan, which would affect him medically; the Department of State's travel warning about Pakistan; and the normal hardships associated with relocation. The record continues to reflect the cumulative effect of the hardship the applicant's father would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, 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 hardship faced by the applicant's qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen father as required under section 212(i) of the Act.

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. The prior decisions of the AAO are affirmed, and the underlying motion is dismissed.