



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 18 2014

Office: ST. LOUIS, MO

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, St. Louis, Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of India and a citizen of Canada 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 adjustment of status by fraud or willful misrepresentation on December 19, 1994 when a Petition for Alien Relative (Form I-130), Application to Register Permanent Residence or Adjust Status (Form I-485), and supporting documents based on a fictitious marriage were filed. The applicant is the spouse of a lawful permanent resident and the father of a lawful permanent resident and a U.S. citizen. 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 spouse and two sons.

In a decision, dated February 14, 2014, the field office director stated that the applicant had failed to show that his lawful permanent resident spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Specifically, the field office director indicated that the medical, emotional, and financial hardship claimed by the applicant's spouse was not supported by the record because the applicant's spouse's immediate family was in the United States and could provide an emotional and financial support system for her in the absence of the applicant and Canada, the country of relocation, would provide free medical care to the applicant's spouse through the Canadian National Healthcare System. The waiver application was denied accordingly.

On appeal, counsel contests the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. Counsel states that the applicant did not knowingly make a material misrepresentation in an attempt to procure an immigration benefit. Counsel also states that the applicant has shown that his U.S. citizen spouse will suffer extreme hardship 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.

The record indicates that on December 19, 1994 a Form I-130 was filed on the applicant's behalf by a woman who claimed to be his wife. At the same time, a Form I-485, based on the fictitious marriage, was filed by the applicant. The Form I-130, which is documented in the record, states that the applicant and that woman were married on October [REDACTED]. The record includes a fraudulent certificate of marriage from the town of [REDACTED] New York, which states that the applicant and the claimed wife were married on October [REDACTED]. The record includes Forms G-325A, which were signed by the applicant and dated December 2, 1994. These forms indicate that the applicant was married to the woman indicated on the marriage certificate on October [REDACTED] and that he had no previous marriages. Submitted in support of the Form I-130 and Form I-485 are photographs of the applicant, a birth certificate for the applicant, a copy of an Indian passport issued in the

applicant's name, a visitor's visa issued on March 23, 1987 at the U.S. Consulate in [REDACTED] and an I-94 containing the applicant's name reflecting an entry on April 29, 1987. The Indian passport submitted to the record, states that it was issued on July 28, 1994 by the Consulate General of India in [REDACTED] California. This passport also indicates that the holder of the passport had a passport previously issued on July 7, 1982, which has been cancelled. This passport lists the applicant's U.S. address as being in [REDACTED] Nebraska and appears to have the applicant's signature. Although the applicant claims to have left India in 1977, becoming a Canadian citizen, the record does not indicate when he obtained Canadian citizenship. The only evidence of his Canadian citizenship is a passport issued in 2010. Thus, his assertion regarding not needing an Indian passport because of his Canadian citizenship is not supported by the record. He has not explained why, if he was a Canadian citizen, he needed to apply for permanent residence in the United States. Finally, the record indicates that the Form I-130 and Form I-485 were denied on April 13, 1996 because the applicant and his claimed wife failed to appear for their adjustment interview.

The documentation submitted with the applicant's current Form I-130, filed by his son, states that he was married to [REDACTED] in Canada. Furthermore, on the applicant's current Form I-485 he states that he did not previously apply for permanent resident status because the application that was previously filed on his behalf was done without his knowledge.

The record includes a statement from the applicant asserting that he did not authorize the Form I-485 application to be filed based on a fraudulent marriage. The applicant states that he paid a man in New York \$3,000 to help him obtain permanent residence in the United States. He states that he obtained an Employment Authorization Card and then, after being informed that his permanent residence application was going to be filed based on a fraudulent marriage, he told the man preparing his application that he did not want the application filed. He states that it is not his signature on any of the application forms, except for the Form G-325A, which he signed as a blank document. He also states that he never submitted to a medical examination and has not had an Indian passport since 1977.

The applicant's explanations can be given little weight when weighed against the documentary evidence against him in the record. The applicant's statements regarding his receiving his Employment Authorization Card before his Form I-485 was filed are not consistent with legacy INS processing. If the Form I-485 had not been filed he would have had no basis for receiving employment authorization. This puts into question the sequence of events noted in the applicant's statement.

Moreover, the applicant is responsible for the information contained on the forms he signs. The applicant admits to having signed the Form G-325A. The Form G-325A, states, that severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact. The applicant signed the Form G-325A and must be held to account for the misrepresentations within the application under the present circumstances.

The Immigration and Nationality Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." See section 235(b)(2)(A) of the Act. See also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See

Kirong v. Mukasey, 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The only evidence submitted in support of the applicant's assertions contesting his inadmissibility is his statement, which is not objective evidence.

Thus, we affirm the field office director's decision that the applicant attempted to obtain an immigration benefit through fraudulent documentation and willful material misrepresentations. Therefore, the record shows that he is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in an attempt to procure an immigration benefit.

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 applicant's qualifying relative is his lawful permanent resident spouse. Hardship to the applicant, his lawful permanent resident son, or his U.S. citizen son is not considered in section 212(i) waiver proceedings unless it is shown that hardship to the applicant or his children is causing hardship to the applicant's 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.

The record of hardship includes: medical documentation for the applicant's spouse, a statement from the applicant, an employment letter for the applicant, and financial documentation for the applicant's sons.

The record does not indicate that the applicant's spouse will suffer extreme hardship as a result of separation or as a result of relocation. Counsel states that the applicant's spouse is suffering from anxiety and depression and that she is receiving psychological treatment, but provides no documentation to support this assertion. In addition, a medical letter in the record regarding the applicant's spouse's cancer diagnosis and follow-up care is dated 2011 and indicates that the

applicant's spouse was diagnosed with breast cancer in 2006, that her cancer is in remission, and that she is required to see an oncologist every 90 days to monitor her condition. The letter also indicates that the applicant is an integral part of her care. We recognize the seriousness of a cancer diagnosis and the follow-up care that would be required, but the medical letter in the record is from 2011. It has now been three years and counsel has failed to submit an updated letter on appeal regarding the applicant's spouse's condition. Counsel also asserts that the applicant's spouse will suffer financially if she is separated from the applicant because the applicant is her only source of financial support and her two sons are unable to support her in his absence. The record fails to document these claims of hardship. The record indicates that the applicant's sons have income to help support their mother financially. The record fails to show why her sons would not be able or willing to financially support her in the absence of the applicant and/or why the applicant, as someone with experience as a motel manager, would not be able to find employment in Canada to help support his spouse from Canada. The current record does not include documentation to support the assertions made regarding the applicant's spouse's emotional and financial hardship in the event of separation. The record does not establish what psychological treatments the applicant's spouse is undergoing, what medical care she currently continues to require as a result of her cancer diagnosis eight years ago, or that she would not be supported financially. We recognize that the applicant and his spouse have been married for 37 years and that separation from a spouse causes hardship. However, the current record does not indicate that this separation would rise to the level of extreme hardship.

Counsel states that the applicant will suffer extreme hardship as a result of relocating to Canada because: she has been living in the United States for 24 years; she has no ties to Canada; she will have no way to financially support herself nor will the applicant be able to support her in Canada; she will lose her lawful permanent resident status; and she will be putting her health at risk by relocating away from her oncologist. Counsel states further that the applicant would not be able to relocate to India as he does not have his Indian passport and he fully identifies as a Canadian citizen.

The current record does not indicate that the applicant's spouse would suffer extreme hardship upon relocation to Canada. We acknowledge that the applicant's spouse has been residing in the United States for 24 years and that her two adult children live in the United States. However, the record indicates that the applicant's children live approximately four hours away from their parents and does not indicate how frequently the family is together. Furthermore, there is no indication that the applicant's sons would not be able to visit Canada or their mother visit them in the United States.

In addition, the record does not support the statements that the applicant's spouse would lose her lawful permanent residence status by relocating nor does it indicate that someone with the applicant's experience in motel management would be unable to find similar employment in Canada. Finally, as stated above, the medical letter regarding the applicant's spouse's cancer diagnosis and follow-up care is dated 2011 and counsel has failed to submit an updated letter regarding the applicant's spouse's condition on appeal. Moreover, nothing in the record indicates that the applicant's spouse would not be able to obtain the same care she receives in the United States, in Canada. Thus, the current record fails to show that the applicant's spouse would suffer extreme hardship as a result of relocation.

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 applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act.

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.