



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: AUG 20 2015

FILE #: [Redacted]

APPLICATION RECEIPT #: [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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Hartford, Connecticut, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on motion. The motion will be granted and the previous decision of the AAO will be withdrawn.

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 procured admission to the United States through fraud or willful 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 spouse and children.

In a decision, dated April 27, 2012, the field office director found that based on a lack of evidence of extreme hardship to a qualifying family member and a lack of positive factors sufficient to offset the negative factors in his case, the applicant did not establish eligibility for a discretionary waiver. The waiver was denied accordingly.

On appeal, we determined that the record did establish that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or a material misrepresentation. We further determined that extreme hardship to a qualifying relative had not been established. The appeal was dismissed accordingly.

In support of the instant motion, the applicant submits the following: affidavits from the applicant and his spouse; mental and medical health documentation pertaining to the applicant's spouse; affidavits from the applicant's mother, sister and the family lawyer in India; support affidavits; financial documentation; a copy of the applicant's child's U.S. birth certificate; evidence of the applicant's father's death in India; information about country conditions in India; a copy of an internet news print out about CPB inspectors involved in fraudulent activity; and photographs of the applicant and his family. 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 [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.

On motion, the applicant maintains that he was not aware of the fraudulent scheme set up by his parents, which involved him obtaining and subsequently entering the United States with a fraudulent I-551 stamp. The applicant asserts that because he was not aware of this scheme, he believed he was entering the United States legally and did not make a willful misrepresentation. Finally, the applicant asserts that the record supports a finding that the applicant's spouse will suffer extreme hardship as a result of separation and as a result of relocation to India.

Based on a thorough review of the record, we find on motion that the applicant has not established that he is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant has not established that he was unaware of the fraudulent nature of the manner utilized to procure the Form I-551 in his passport and subsequent entry into the United States. Irrespective of how the fraudulent Form I-551 visa stamp was obtained, the applicant, an adult at the time, had a duty and responsibility to review any documentation he intended to present for admission to the United States prior to entry, to ensure its authenticity and accuracy. The applicant cannot deny responsibility for any misrepresentations made on the advice of another, in this case, the referenced [REDACTED] brothers, unless it is established that the applicant lacked the capacity to exercise judgment. See 9 FAM 40.63, Note 5.2, Interpretation of Term "Willfully," Misrepresentation is Alien's Responsibility.<sup>1</sup> The applicant has not shown that he was lacking in capacity to exercise judgment with respect to the activities in India with respect to the Form I-551, and when he applied for admission to the United States with this visa in 2003. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Thus, on motion the applicant has failed to meet his burden in showing he is admissible to the United States.

A waiver of inadmissibility under section 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. 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).

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<sup>1</sup> As noted in Note 5.2 of 9 FAM 40.63:

An alien who acts on the advice of another is considered to be exercising the faculty of conscious and deliberate will in accepting or rejecting such advice. It is no defense for an alien to say that the misrepresentation was made because someone else advised the action unless it is found that the alien lacked the capacity to exercise judgment.

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, 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 applicant's U.S. citizen spouse asserts that she will suffer emotional and financial hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In a declaration she explains that long-term separation from her husband would cause her emotional hardship. She explains that she has a history of depression that will be exacerbated were her husband not by her side on a daily basis to care for her and their two young children. In addition, the applicant's spouse details that her husband is the sole financial provider while she cares for the children but were he to relocate abroad, she would have to obtain child care coverage that would be cost prohibitive, and due to her anxieties, she would not be able to handle both raising her children and financially providing for them.

In support, the applicant has submitted mental health documentation establishing that his spouse is in therapy for depression and anxiety. The documentation further establishes that the applicant plays a critical role in his wife's daily functioning, including driving her to her therapy sessions since she has anxieties about the driving distance, and being an active co-parent to their two young children. Documentation has also been submitted establishing that the applicant's spouse has been prescribed anti-depressant and anti-anxiety medications to treat her mental health issues. The applicant has also submitted financial documentation establishing his financial contributions to the family as manager of a business. Moreover, letters in support have been provided outlining the hardships the applicant's spouse would experience were his husband to relocate abroad as a result of his inadmissibility. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse will experience were her husband to relocate abroad due to his inadmissibility rises to the level of extreme. We conclude that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if she remains in the United States.

Extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. To begin, the applicant's spouse maintains that if she accompanies the applicant abroad they will experience financial hardship. She further asserts that she has a history of depression and anxiety that requires monitoring and treatment and relocating abroad would exacerbate her conditions.

The record establishes that the applicant's spouse has been residing in the United States for over a decade. She and the applicant own a home in the United States. Were the applicant's spouse to relocate abroad, she would be separated from her community, her home, the business that her husband has been managing, and the professionals familiar with her mental health conditions and the treatment place. Documentation has also been provided establishing that the applicant's family in India is reliant on him for financial support due to the problematic country conditions in India. Based on a totality of the circumstances, the applicant has established that his spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's wife and young children would face if the applicant were to relocate to India, regardless of whether they accompanied the applicant or stayed in the United States, community ties, long-term gainful employment in the United States, home ownership, the payment of taxes, the apparent lack of a criminal record, and support letters from family and friends. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation as outlined in detail above and periods of unlawful presence and employment in the United States.

The violations committed by the applicant are serious in nature. Nonetheless, we find that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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*NON-PRECEDENT DECISION*

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 been met.

**ORDER:** The appeal is sustained.