



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF B-S-

DATE: DEC. 14, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), because he had misrepresented the fact that he was in removal proceedings on his previous application for adjustment of status under section 245 of the Act, 8 U.S.C. § 1255. The permanent resident status accorded the Applicant based on that adjustment application was rescinded. The Applicant seeks a waiver under section 212(i) of the Act in order to remain in the United States with his U.S. citizen spouse and child, and his mother, who is a lawful permanent resident.

The Director found that the Applicant had not established that his spouse or mother would suffer extreme hardship if the waiver was not granted and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that the denial of his Form I-601 was in error, because the Director did not consider all of the evidence submitted in support of the application and made several incorrect statements that weighed negatively against the Applicant.

The record includes, but is not limited to: a brief in support of the appeal, the Applicant's child's birth certificate, a statement from the Applicant's spouse, a summary of the spouse's medical condition, tax documents, bank and medical insurance statements, a lease agreement, and utility bills. The entire record was reviewed and considered in rendering a decision on appeal.

Section 212(a)(6)(C)(i) of the Act provides in pertinent 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.

The record reflects that the Applicant had previously applied for adjustment of status with U.S. Citizenship and Immigration Services (USCIS)<sup>1</sup> while he was in removal proceedings. On the Form I-485, Application to Register Permanent Residence or Adjust Status, the Applicant answered “no” to the question: “Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings?” Although he was granted permanent resident status, because the Applicant was in removal proceedings at the time, USCIS did not have jurisdiction over his adjustment of status application. *See* 8 C.F.R. §§ 245.2(a) and 1245.2(a). USCIS subsequently rescinded the Applicant’s permanent resident status. Because the Applicant misrepresented the fact that he was in removal proceedings to obtain adjustment of status before USCIS, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The Applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides:

(1) The Attorney General [now Secretary of the Department 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 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 [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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 relative, including a U.S. citizen or lawful permanent resident spouse or parent of an applicant. In this case, the Applicant’s qualifying relatives are his U.S. citizen spouse and his lawful permanent resident mother. If extreme hardship to the qualifying relative 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 provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a

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<sup>1</sup> Formerly the Immigration and Naturalization Service (INS).

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 at 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

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28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to one or both qualifying relatives.

We will first address hardship to the qualifying relatives upon their relocation to India. The record shows that the Applicant, his spouse, and mother were born and grew up in India. In her affidavit the Applicant's spouse states that she has known the Applicant for a long time, as he lived in her native village in [REDACTED] India. The marriage was arranged by their families, who know each other well. The Applicant's spouse avers that she will not relocate to India in the event the Applicant is deported. She states that relocation would deprive their child of the rights and privileges he derives from birth in the United States. She further explains that India has a high rate of poverty, high rate of inflation, power outages, and water shortages in the summer. The Applicant submits no evidence to support this statement. In addition, the Applicant's spouse states that relocation to India is not an option for her, because she suffers from lumbar facet joint syndrome and cervical disc herniation. She claims that she would not be able to obtain proper medical care for her conditions and the needed prescription medication in India. The Applicant submits a summary of his spouse's medical visit on July 15, 2014, which indicates that the doctor recommends continued physical therapy, noting a possibility of future surgical intervention. However, the Applicant submits no evidence to show that his spouse would not be able to undergo physical therapy in India or that she requires prescription medication that is unavailable in India. Finally, the Applicant's spouse claims that the Applicant is 39 years old and that it would be difficult for him to find work in India. She does not know whether he would be able to support himself in India because of the general poverty and high unemployment rate. The Applicant submits no evidence to substantiate these claims. Going on record without supporting documentation will not meet the Applicant's burden of proof in this proceeding. *See Matter of Soffici*, 221&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Considering the evidence of hardship upon relocation in the aggregate, we find that the evidence is insufficient to establish that the Applicant's spouse will suffer extreme hardship in the event she chooses to relocate to India with him.

The Applicant's mother is also a qualifying relative for the purposes of a waiver under section 212(i) of the Act. The record, however, does not include evidence of hardship to the Applicant's mother upon relocation to India. Therefore, we cannot conclude that the Applicant's mother would suffer extreme hardship if she were to relocate to India.

The Applicant's spouse asserts that she and her mother-in-law will suffer extreme emotional and financial hardship if they remain in the United States without the Applicant. The Applicant and his spouse have been married since 2014 and they have one child, born in [REDACTED]. The Applicant's spouse claims that the Applicant is an affectionate father who takes care of their child, drops him off at school in the morning, and takes him to parks on the weekends. She does not know how their child would react if the Applicant were to be removed. Direct hardship to an applicant's child is not relevant in waiver proceedings under section 212(i) of the Act. However, hardship to a family unit or a non-qualifying family member will be considered to the extent that it affects qualifying family members. It is reasonable to expect that separation from the Applicant will be emotionally difficult

for the Applicant's young son. However, the Applicant has not submitted evidence to show how the effects of this separation on his son, emotional or otherwise, would cause hardship to his mother and spouse.

The Applicant's spouse further claims that she would experience hardship if the Applicant is not in the United States to help her with her medical problems. As stated above, the Applicant's spouse has been diagnosed with lumbar facet joint syndrome in addition to cervical disc herniation, and she requires physical therapy. The July 2014 medical visit summary indicates that she may also occasionally require assistance at home for daily activities. Although the Applicant's spouse claims in her affidavit that she is unable to overcome her chronic medical condition without the Applicant's support, she provides no examples or evidence to substantiate this claim. Further, the Applicant submits no evidence to demonstrate the effects of his spouse's ailment on her ability to take care of herself and their child or to maintain employment. The evidence shows that the Applicant's spouse has medical insurance for herself and their child. Therefore, the Applicant's spouse's assertion that she needs his help to manage health issues without any supporting documentation is insufficient to establish that she would suffer hardship related to her medical conditions if the Applicant were to be removed from the United States. *See Matter of Soffici, supra.*

The Applicant's spouse also asserts that the Applicant's removal from the United States would cause financial hardship to her and her mother-in-law. She claims that the Applicant is the household's primary breadwinner. In addition, he is solely responsible for providing financial support for his mother, who lives with the Applicant and his spouse. According to his spouse, if the Applicant is deported, his spouse would have to support not only herself and the couple's child, but also the Applicant's mother. Moreover, she would likely be responsible for supporting the Applicant, as it is unlikely that he will be able to obtain employment in India. The evidence relating to the Applicant's and his spouse's financial situation consists of a copy of a lease agreement, copies of the Applicant's spouse's federal income tax returns filed between 2011 and 2013, her W-2 wage and tax statements forms, the information provided by the Applicant and his spouse on their Biographic Information G-325A forms, bank account and medical insurance statements and some utility and other bills. The lease agreement and the Applicant's spouse's statement indicate that the family currently rents a house from the Applicant's spouse's brother-in-law for \$1500 a month. The record does not indicate who is responsible for paying the rent. On his Form G-325A, the Applicant indicated that he has had odd jobs between 2003 and 2014 and that he has been employed as a gas station manager since 2014. The Applicant has not submitted employment records to show his income. In addition, the Applicant has not submitted documents to show his financial contributions to the household expenses or to show that he supports his mother, financially or otherwise. Accordingly, the record lacks sufficient evidence to prove the Applicant's spouse's claim that the Applicant is the primary breadwinner for the family and that his mother relies solely on his financial support.

Similarly, the Applicant has not submitted documents to show that his spouse would be obligated to take care of his mother upon his departure. Although the Applicant's spouse claims in her statement that the Applicant's mother lives with them, the Form I-864, Affidavit of Support under Section

213A of the Act, which she submitted on the Applicant's behalf, indicates that her household consists of only three people: herself, the Applicant, and their child. The Applicant's spouse asserts that she would have to find another job and possibly seek government assistance if she remains in the United States without the Applicant. However, this claim is not supported by the record. Specifically, the record reflects that the Applicant's spouse has been employed as a bookkeeper since 2010. She reported an annual income of \$38,100 on the Form I-864, which she signed in July 2014. The Applicant's spouse has filed federal tax returns as a head of household between 2011 and 2013, claiming her child as the only dependent. The Applicant has not submitted evidence of commingling of his and his spouse's financial resources before or after their marriage. Further, the record does not indicate that the Applicant's spouse had difficulty in meeting her financial obligations before she married the Applicant. Although the Applicant's spouse states that she will likely have to support the Applicant in India, the Applicant submits no evidence to show that he would not be able to obtain employment there. The Applicant, through counsel, states on appeal that his spouse would experience extreme financial hardship without him because she resides in one of the most expensive states in the United States. In support of this claim, the appeal brief references a 2014 *USA Today* article listing New Jersey as the fifth most expensive state to live in the United States. However, as stated above, the Applicant has not submitted evidence to show that he financially contributes to the family's household expenses. In addition, the Applicant does not address the possibility of his spouse moving to another state or making other living arrangements, with her or his family, for example. Moreover, 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). Furthermore, the Applicant submits no evidence pertaining to his mother's financial situation, her living arrangements, or other documents to prove that she relies on his financial support, as claimed. Although the Applicant's spouse's assertions regarding her and her mother-in-law's financial hardship are relevant and have been taken into consideration, in the absence of supporting evidence, we can afford them little weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information 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 such evidence, not its admissibility.") We find, therefore, that the Applicant has not demonstrated that his spouse or mother would experience financial hardship if the waiver application is denied.

The record, reviewed in its entirety does not support finding that the Applicant's U.S. citizen spouse or his permanent resident mother will face extreme emotional, financial, medical or other types of hardship if the Applicant is unable to remain in the United States. We recognize that both qualifying relatives will endure some hardship as a result of separation from the Applicant. However, their situation will be no different than that of any other family separated from a loved one as a result of deportation. The record does not establish that the difficulties the Applicant's spouse and mother would face as a result of their separation from the Applicant, even when considered in the aggregate, rise to the level of extreme as contemplated by the statute and case law.

We find, therefore, that the Applicant did not establish extreme hardship to his U.S. citizen spouse or mother as required under section 212(i) of the Act. As the Applicant has not established extreme

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hardship to either of his qualifying relatives, no purpose would be served in determining whether he 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-S-*, ID# 14270 (AAO Dec. 14, 2015)