

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



(b)(6)

[Redacted]

DATE: **JUN 05 2015**

FILE: [Redacted] RELATES)

APPLICATION RECEIPT #: [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:

[Redacted]

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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. **Motions must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision.** The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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, Newark, New Jersey, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured nonimmigrant status in the United States 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, born in 2003.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

In support of the appeal counsel for the applicant submits a brief, psychological and medical documentation pertaining to the applicant's spouse and child, financial documentation, transcripts and tuition statements, and country condition documentation. 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.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 . . .

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the field office director determined that the financial documentation submitted in support of the applicant's F-1 "change of

nonimmigrant status" application in April 2010 was fraudulent. On appeal, counsel maintains that the applicant was a victim of a scam by an agency that she retained to assist her with her F-1 Student application. Counsel asserts that the agency forged the applicant's signature on documents submitted to USCIS and also produced false documents, all without the applicant's consent and thus, any misrepresentations or fraud with respect to the F-1 application submitted by the agency on behalf of the applicant should not render the applicant inadmissible.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

To establish eligibility for a non-immigrant F-1 status, section 101(a)(15)(F) of the Act states, in pertinent part:

an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study...

The U.S. Department of State Foreign Affairs Manual further provides in pertinent part:

[T]he applicant must have sufficient funds to successfully study in the United States without resorting to unauthorized U.S. employment for financial support. An applicant must provide documentary evidence that sufficient funds are, or will be, available to defray all expenses during the entire period of anticipated study. This does not mean that the applicant must have cash immediately available to cover the entire period of intended study, which may last several years. You must, however, establish, usually through credible documentary evidence, that the applicant has enough readily available funds to meet all expenses for the first year of study. You also must be satisfied that, barring unforeseen

circumstances, adequate funds will be available for each subsequent year of study from the same source or from one or more other specifically identified and reliable financial sources.

*DOS Foreign Affairs Manual, § 41.61 N6.1-1*

The record establishes that the financial documentation submitted in support of the applicant's F-1 "change of status" application was fraudulent. By submitting fraudulent financial documentation, the applicant led the USICS to believe that she had readily available funds to meet her expenses. The applicant had the duty and the responsibility to review the Form I-539, Application to Extend/Change Nonimmigrant Status and all supporting documentation prior to submission, irrespective of who she had retained to process the application on her behalf. As such, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation with respect to her April 2010 nonimmigrant application.

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 record establishes that the applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, their U.S. citizen child, or the applicant's mother-in-law 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).

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 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 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 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., 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 contends that he would experience emotional, medical and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. The applicant’s spouse contends that he works long hours to provide financial support to his family and he needs his wife to remain by his side to care for him and his child. He contends that he suffers from Type II diabetes and his wife plays an integral role in his health and diet. He further states that his wife is primary caregiver for their child. Finally, the applicant’s spouse asserts that if his wife relocated abroad, he would not be able to maintain any of the family loans and his part-time MBA Program would be halted or interrupted.

We acknowledge the contentions from both the applicant’s spouse and the psychological evaluation that the applicant’s spouse and child will experience emotional hardship were they to remain in the United States while the applicant relocates abroad, but the record does not establish the severity of this hardship or the effects on their daily lives. A letter from the applicant’s spouse’s treating physician states that the applicant’s spouse suffers from diabetes and high cholesterol and he requires

significant support with dietary needs and lifestyle modifications. The letter does not, however, provide detail about any limitations on his daily activities and ability to care for himself or what hardships he will experience were his wife specifically to reside abroad. Further, the record establishes that the applicant's spouse was born and raised in India. The applicant has not established that her husband and their child would not be able to travel to India to visit the applicant.

As for the financial hardship referenced, the record establishes that the applicant's spouse is gainfully employed, earning approximately \$120,000 a year. The record does not establish that the applicant's spouse would be unable to obtain alternate childcare coverage for his child so that he would be able to continue working and, if still enrolled in an MBA program<sup>1</sup>, pursue his studies, and continue paying any outstanding loans. Alternatively, the record does not establish that the applicant would be unable to obtain gainful employment in India that would permit her to assist her spouse and child as needed. 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 applicant has thus not established that her spouse would experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's U.S. citizen spouse states that he has been living in the United States for over 15 years and starting his life over again in India would not be easy. Further, the applicant's spouse asserts that he would not be able to obtain gainful employment in India. The applicant has not submitted any supporting documentation to establish that her U.S. citizen spouse specifically would experience extreme hardship were he to return to his native country to reside with the applicant. The information submitted about insurgent and terrorist activity in India is general in nature. The applicant has thus not established that her spouse would experience extreme hardship were he to relocate abroad to reside with the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

<sup>1</sup> The record is unclear as to whether the applicant's spouse is currently enrolled in an academic program. The record indicates the applicant's spouse enrollment at [REDACTED] through December 2013, one year prior to the instant appeal submission.

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*NON-PRECEDENT DECISION*

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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 will be dismissed.