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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 25 2015

FILE #:
APPLICATION RECEIPT #:

IN RE:

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:

INSTRUCTIONS:

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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 applicant is a native and citizen of India who was found inadmissible 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 procuring admission into the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant did not demonstrate that his spouse would suffer extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated November 15, 2014.

On appeal, the applicant, through counsel, states proper consideration of all the relevant factors shows that his spouse and daughters will suffer extreme hardship if he is not granted a waiver of inadmissibility. The applicant also indicates that his misrepresentation was not willful; instead it was "purely unintentional," as he was fleeing persecution in India. *Statement accompanying Form I-290B, Notice of Appeal or Motion*, dated December 16, 2014.

The applicant indicates that he would file a brief or additional evidence in support of his appeal within 30 days of the filing of the appeal, but no additional brief or evidence was received. The record therefore is considered complete as of the date of this decision.

In support of the waiver application, the record includes, but is not limited to: affidavits and statements from the applicant and his spouse; biographical information for the applicant, his spouse, and their two daughters; copies of federal income tax returns filed by the applicant and his spouse; letters from family, friends, and community members concerning the applicant's family and moral character; country-conditions documentation concerning India; and documentation of the applicant's immigration history. The entire record was reviewed and considered in rendering a decision on the appeal.

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 Field Office Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, as the applicant procured admission to the United States on November 17, 2001, using an Indian passport and U.S. visa in the name of another individual. The applicant admitted to obtaining admission to the United States with the documents of another individual when he requested asylum on November 19, 2002. The applicant's asylum application was not approved,

and he was referred to the immigration court, where he was placed into removal proceedings. The applicant was ordered removed *in absentia* and never sought asylum in immigration court. The applicant's case was reopened on a different basis and proceedings were terminated without prejudice on September 27, 2012, to allow the applicant to seek adjustment of status before U.S. Citizenship and Immigration Services (USCIS).

On appeal, the applicant states that he is an asylee and that he "did not willfully use a fraudulent passport" to enter the United States, but rather used the passport out of "mere desperation" to escape persecution in India. He asserts that courts have held that using a fraudulent passport "to gain entry in order to escape persecution does not completely undermine an applicant's case and credibility." The applicant provides no legal authority to support his assertion.

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)). The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). "[C]lear, unequivocal, and convincing evidence" is needed to find an individual inadmissible for a willful misrepresentation of a material fact. *See Kungys v. United States*, 485 U.S. 759, 771-72 (1988).771-72.

The record includes the applicant's Form I-589, Application for Asylum and Withholding of Removal, but it does not demonstrate that he was granted asylum in the United States. Moreover, this case is distinguished from cases in which individuals used fraudulent documents *en route* to the United States and did not present them to U.S. government officials for admission, but rather immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984). In certain cases individuals have been found to have made timely retractions or have been found not to have made a material misrepresentation before a U.S. government official when they immediately seek asylum upon being asked for admission documents to enter the United States. For the retraction to be effective, however, it has to be voluntary and without delay at the first opportunity. *Matter of Namio,* 14 I&N Dec. 412, 414 (BIA 1973). In this case the applicant did not disclose his true identity immediately upon arriving in the United States. Instead he procured admission to the United States by misrepresenting his identity and presenting a fraudulent passport to a U.S. government official. He revealed his true identity when seeking asylum in the United States almost one year later.

The applicant's misrepresentation of his identity was willful, as the applicant knew that the identity on the passport and visa that he used to enter the United States was not his true identity. Although the applicant claims that his use of the passport was not willful because he was desperate to escape persecution, he does not claim that he did not know that he was using the

identity and documents of another individual or that his use of that passport and visa was involuntary. The applicant bears the burden of proof in these proceedings and he has not met his burden of establishing that he is not inadmissible. Section 291 of the Act, 8 U.S.C. § 1361. The Field Office Director correctly concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or willful misrepresentation of a material fact.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

> (1) The Attorney General [now 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.

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 a U.S. lawful permanent resident or U.S. citizen spouse or parent of the applicant. The record indicates that the applicant's qualifying relative is his U.S. citizen spouse. 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-Moralez,* 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 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 deportation, 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, 885 (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 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.

On appeal the applicant states that his U.S. citizen daughters will suffer extreme hardship as a result or his inadmissibility and that he therefore should be eligible for a waiver of inadmissibility. The applicant's U.S. citizen daughters, however, are not qualifying relatives under the Act. Hardship to the applicant or his U.S. citizen children will not be separately considered, except as the applicant demonstrates that hardship to affect his spouse.

The record indicates that the applicant and his spouse have been married for 10 years and that the applicant's spouse, a native of India, became a U.S. citizen on May 12, 2011. The applicant states that his U.S. citizen spouse will be forced to relocate to India with the applicant should his waiver application not be approved, as she is not working and he is the family's sole provider. The record reflects that the applicant's spouse claimed on Form I-864, Affidavit of Support, that she has been

unemployed since 2006. According to a copy of the family's 2011 federal income tax returns, the family's income that year was $31,137. The applicant does not further describe the hardship his spouse would experience were she to remain in the United States without him. As a result we cannot determine that he has met his burden to show that his wife would suffer extreme hardship were she and the applicant to be separated. Again, the applicant bears the burden of proof in these proceedings and he has not met his burden of establishing that his spouse would suffer extreme hardship were she to be separated from the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

Regarding her relocation to India, the applicant's spouse states that she would suffer hardship "owing to [her] health, employment, and other social factors." The applicant's spouse states that she is sensitive to dust and pollen and that her village where she would stay in India has dust particles and pollutants that would cause her health problems. She further states that there "are hardly any opportunities for employment" and that she and the applicant do not own property in India. The applicant's spouse also states that she is no longer a citizen in India and would not have permission to work there.

Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (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 it."). 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 not provided documentation of his spouse's medical condition or how that medical condition would be affected in India. In his own statement, the applicant does not mention his spouse's sensitivity to dust and pollen, but rather states that he and his children suffer from such sensitivities. Further, the applicant has not provided documentation that his spouse is no longer a citizen of India and that she would not have the right to work there or would face discrimination there as a foreigner. The record does not indicate the applicant's spouse's educational level or her work experience before marrying the applicant.

The applicant's spouse also expresses fear that her children would not receive a proper education in India and that they would be targeted by criminals, as they are Americans. The applicant says that he will be targeted by the police in India, as he stated had previously happened to him, causing him to flee. In support of these statements, the applicant submitted voluminous documentation on reports on problems with the health-care system in India and concerning kidnapping of children in India, mostly from 2011 and 2012. Without documentary evidence concerning any specific health condition or more detailed information on the opportunities for employment relating to the applicant and his spouse's specific educational levels and family ties to India, we are not in a position to determine that the applicant's spouse would suffer extreme hardship based on general country conditions in India. The applicant's spouse is a native of India and the record does not establish that she has family, property, employment, or other ties to the United States that would be severed upon relocation to India. Based on the information provided,

considered in the aggregate, the evidence does not illustrate that the hardship that would be experienced in this case, should the applicant's spouse relocate to India, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O*, 21 I&N Dec. at 383.

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 as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion. There is no humanitarian basis for approving an application for a waiver of inadmissibility under section 212(i) of the Act, although the applicant asks that his waiver application be approved on a humanitarian basis.

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 is dismissed.