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U.S. Citizenship
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Services

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JUN 20 2007

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of Pakistan 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 seeking admission into the United States by 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), based on his qualifying relative, his naturalized citizen wife [REDACTED]. The Director concluded that the applicant failed to establish that extreme hardship would be imposed on his wife and accordingly denied the waiver request. *Decision of the Director*, dated June 23, 2006.

On appeal, counsel makes the following assertions. Citizenship and Immigration Services (CIS) did not meet its burden of proving the applicant's inadmissibility to the United States. There is no proof of a fraudulent passport, although CIS found the applicant inadmissible on this ground. There is no testimony from the asylum officer; and the asylum officer's interview notes were not entered into the record. The applicant was not asked whether he made the statement concerning fraudulent documents, and he was not given an opportunity to explain the circumstances surrounding his asylum claim such as whether the interpreter accurately translated his testimony. The applicant entered the country at Los Angeles, California; he never said he entered at J.F.K. Airport. The case, *Matter of Lin Qiang* [REDACTED] is similar to the one presented here. The applicant should be granted a waiver because he came to the United States to apply for asylum and his claim is bona fide. The Act has exceptions to the general 212(a) grounds of inadmissibility for refugee and asylum seekers such as section 207(c)(3) and 209 (adjustment of status of refugees). Asylees often flee their home country without valid travel documents to enter the United States. The manner of entry into the United States does not impact eligibility for asylum and adjustment of status, as reflected in section 208 and 209 of the Act. If granted asylum, an applicant's inadmissibility based on fraudulent documents is waived by CIS. It is not proper that an alien who falsely claims citizenship is admissible while a bona fide asylee's adjustment of status application under section 245(i) is denied because of the manner of entry into the United States. As a bona fide asylum applicant, [REDACTED] should be granted a discretionary waiver for humanitarian concerns: to ensure family unity and for public interest under section 207 and 209 of the Act. CIS has not adjudicated the applicant's asylum application or referred it to an immigration court. It is not in the public interest to allow entry into the United States without inspection and adjustment status under section 245(i) of the Act, and not allow adjustment of status for asylum seekers who arrive in the country at an airport and are intercepted and admitted into the country. CIS failed to consider all of the relevant hardship factors and to consider them cumulatively, as in *Watkins v. INS*, 63 F.3d 850 (9th Cir. 1995) and *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999).

In this proceeding, the AAO will first address the finding of inadmissibility under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, 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.

The record contains the applicant's Form I-589 (Request for Asylum in the United States), notes of the asylum interview held on November 30, 1992, the Record of the Interpreter's Oath (Asylum Interview),¹ the Waiver of Presence of Attorney or Representative in Asylum Interview, the April 20, 1993 Notice of Intent to Deny, and May 24, 1993 letter of denial from the director of the Newark Asylum Office in New Jersey.

Prior to the issuance of the denial letter, the director had mailed to [REDACTED] a Notice of Intent to Deny (dated April 20, 1993). This letter indicated that during the asylum interview [REDACTED] claimed to have left his country "with a fake passport which has been inspected in your country at the time of departing from Pakistan and also by the US INS official at the JFK airport." It is noted that [REDACTED] was given 30 days in which to respond to the notice of intent to deny letter; the record does not contain a response to the letter. The applicant was therefore given an opportunity to offer evidence or argument in rebuttal to the Notice of Intent to Deny.

Counsel claims that [REDACTED] did not enter the United States at J.F.K. Airport; instead, he entered the country at Los Angeles, California. Counsel's assertion is refuted by the asylum application signed by [REDACTED] both upon submission and at the interview. In the application [REDACTED] indicates that he arrived in the United States at "N.Y.[.] JFK." He also states in the application that he lost his passport. Based on the information in the application, there would be no physical proof of a fraudulent passport. However, the notes of the asylum interview and the Notice of Intent to Deny state that [REDACTED] entered the United States on March 15, 1991 using a fraudulent passport.²

A case on point is *Matter of D-L- & A-M*, 20 I. & N. Dec. 409 (BIA 1991). The Board of Immigration Appeals (BIA) held in *Matter of D-L- & A-M* that outside of the transit without visa context, an alien is not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter

¹ The record reflects that the interpreter provided by the applicant indicated on the Record of Interpreter's Oath that he was fluent in Urdu and Punjabi and that by conversing with the applicant he determined that there was a mutual comprehension between them.

² The asylum application provides a different entry date. It indicates that [REDACTED] arrived in the United States on March 15, 1992 in "N.Y.[.] JFK."

on those documents. In the case, the BIA determined that the evidence showed that the applicants purchased a fraudulent passport bearing a nonimmigrant visa for the United States; upon arrival in Miami, they surrendered the false document to United States immigration officials, immediately revealed their true identity, and asked to apply for asylum. The BIA concluded that their action did not provide a basis for excludability under section 212(a)(19) of the Act as it did not involve fraud or misrepresentation to an authorized official of the United States Government. *Id.* at 412-413.

With the instant case, so as to gain admission into the United States, the record reveals that [REDACTED] presented fraudulent documents to immigration officials. However, unlike the aliens in *Matter of D-L- & A-M*, [REDACTED] did not immediately surrender the fraudulent documents to immigration officials and ask to apply for asylum. Instead, he entered the United States using the fraudulent documents and at a later date filed an asylum application that was received by CIS on September 28, 1992. At the asylum interview on November 30, 1992, which was held months after his entry into the country, [REDACTED] revealed to CIS his use of fraudulent documents to enter the United States.

In *Esposito v. INS*, 936 F.2d 911, 912 (7th Cir.1991) the Seventh Circuit Court of Appeals found that an alien who presented immigration officials at the border with an Italian passport bearing his picture, but someone else's name, engaged in willful fraud and misrepresentation of material fact. It stated that “[a]n individual who knowingly enters the United States on a false passport has engaged in willful fraud and misrepresentation of material fact.” *Id.* at n.1.

Accordingly, there is substantial evidence to support the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. The applicant procured entry into the United States by fraud or the willful misrepresentation of a material fact by presenting to U.S. immigration officials fraudulent documents.

The facts in *Matter of Lin Qiang* are dissimilar from those presented here. In *Matter of Lin Qiang*, the BIA found insufficient evidence in the record to support the immigration judge's material misrepresentation finding. The BIA stated that the respondent could not recall the questions asked or the answers given before the asylum officer during the interview and the respondent testified that he signed the asylum application without knowing its contents. The BIA indicated that the immigration judge's request for the presence of the asylum officer at the hearing recognized the need for additional evidence to make a misrepresentation finding. The BIA stated that the asylum officer did not testify at the hearing and the asylum officer's notes of the interview were not entered into the record. The immigration judge, according to the BIA, made the misrepresentation finding based on inaccuracies in the respondent's asylum application. Without additional evidence from the asylum officer, the BIA found the record insufficient to support a material misrepresentation finding.

It is noted that since *Matter of Lin Qiang* is not a published decision, even if the facts were similar, the case would not be binding. While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding.

With the instant case, the record contains the notes of the interview conducted by the asylum officer, the Notice of Intent to Deny letter, and the asylum application, which collectively set forth the circumstances of [REDACTED] entry into the United States and establish the ground of inadmissibility.

Counsel claims that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he came to the United States to apply for asylum and he filed a bona fide asylum application. The AAO points out that the applicant's asylum application was denied by CIS on May 24, 1993, and the record contains no evidence to show that [REDACTED] renewed his request for asylum before an immigration judge. Furthermore, as already discussed in this decision, the fact pattern of the instant case is distinguishable from that of *Matter of D-L- & A-M-*, a case in which aliens were found admissible to the United States despite their use of false documents in order to gain entry into the country and apply for asylum. Even though Mr. Jahan submitted an asylum application, he is currently filing for adjustment of status under section 245(i) based on his I-130 relative petition, not as an asylee or refugee. None of counsel's assertions regarding sections 207, 208, or 209 of the Act are relevant in this proceeding. With regard to counsel's statements about section 245(i) of the Act, the AAO notes that while 245(i) excuses entry without inspection, the applicant must still be admissible, as defined by section 212 of the Act, 8 U.S.C. § 1182. The applicant is clearly inadmissible under section 212(a)(b)(c) and therefore must apply for a waiver under section 212(i).

The AAO will now consider counsel's assertion that the applicant qualifies for a section 212(i) waiver of inadmissibility.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 seeks a waiver of inadmissibility. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's wife. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, *supra* at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the BIA set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to the applicant’s wife. Extreme hardship to the applicant’s wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The psychological evaluation of [REDACTED] by [REDACTED], states the following. [REDACTED] lives with her mother who had surgery for breast cancer and is now undergoing chemotherapy and is not able to work. [REDACTED] and her husband support her mother. [REDACTED] father lives in Canada; her sister lives in Italy. [REDACTED] has experienced fertility problems for five years. She feels that Pakistan would be dangerous for her and her child. [REDACTED] has a good job and needs her income to bring up her child. She is anxious and depressed about the possibility of losing her husband. It has been demonstrated that children who are separated from a parent for a significant period of time are at high risk for the development of separation anxiety disorders, depressive symptomatology, and symptoms of isolation, according to research by [REDACTED] [REDACTED]’s child will develop some, or all, of the symptoms of a separation anxiety disorder. [REDACTED] suffers from an Adjustment Disorder with Mixed Anxiety and Depressed Mood as a direct result of her fear that her husband will have to leave the United States and return to Pakistan.

The declaration of [REDACTED] states the following. She has been married to the applicant for over five years and has known him since 1997. She cannot move to Pakistan. She was born and raised in Albania, does not speak Urdu, comes from a difficult culture, and fears religious persecution. She is pregnant and requires pre-natal care, which would not be available in Pakistan. She cannot be alone in the United States where she has no family except her lawful permanent resident mother. She supports her family who live in Albania. There is a history of breast cancer in her family, of which she is at risk. *Declaration of [REDACTED] sworn to on July 17, 2006.*

[REDACTED] is pregnant and her due date is March 11, 2007. *Letter from [REDACTED] dated July 13, 2006.*

The record contains information about conditions in Pakistan for 2003. It also contains a declaration in the record from [REDACTED] sworn to on April 24, 2006, which discusses her fertility treatments and the need for her and her husband to live together in order to have children. Income tax returns; wage statements; an April 27, 2006 letter from [REDACTED]; a medical bill; photographs, a letter from The Bank of New York indicating that [REDACTED] earns \$81,744 annually; a marriage certificate showing the applicant and his wife married on March 9, 2001; and other documents are in the record. There is a medical document in the record relating to [REDACTED] mother, but it is not legible. The AAO is unable to determine the significance of the document; and there is nothing in the record from a treating physician indicating the mother's condition, prognosis, treatment, or need for the applicant's presence.

The evidence in the record establishes that [REDACTED] would endure extreme hardship if she joined the applicant in Pakistan.

The record contains a U.S. Department of State report on Pakistan for 2003. The report conveys that the government in Pakistan is unwilling to take action against societal forces hostile to those who practice a different faith; and that the accretion of discriminatory religious legislation has fostered an atmosphere of religious intolerance, which contributes to violence directed against Christians, Hindus, and others. The report discusses sectarian violence against Christians. The U.S. Department of State report on Pakistan for 2005 indicates that Christians were the targets of religious violence.

Based on the U.S. Department of State reports, the AAO finds that the applicant's spouse would endure extreme hardship living in Pakistan as a Christian.

The evidence in the record is not sufficient to establish extreme hardship to [REDACTED] in the event that her husband's waiver is not granted and she remains in the country.

The psychological evaluation by [REDACTED] is respected and valuable; however, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Furthermore, the assertion by [REDACTED] regarding the risk of [REDACTED] child developing separation anxiety disorders, depressive symptomatology, and symptoms of isolation is not based on an ongoing relationship between [REDACTED] and the child.

The AAO is mindful of and sympathetic to the emotional hardship that follows as a result of separation from a loved one. With the circumstances here, the AAO finds that [REDACTED] situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199,

1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The record before the AAO is insufficient to show that the emotional hardship to be endured by [REDACTED] upon separation from her husband of six years, if she remains in the United States, is unusual or beyond that which is normally to be expected upon deportation.

[REDACTED] does not claim that she will experience extreme economic hardship if she remains in the country without her husband. The record reflects that [REDACTED] is employed with The Bank of New York as a project leader/lead analyst earning \$81,744 annually. There is no evidence in the record establishing that she will endure extreme economic hardship if she must support herself, her child, and her mother if her husband leaves the country. Furthermore, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the respondent statutorily ineligible for relief, the AAO declines to discuss whether or not he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.