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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

H2

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[REDACTED]

FILE:

[REDACTED]

Office: BOSTON, MA (HARTFORD)

Date:

OCT 19 2007

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 District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED] (also known as [REDACTED] claims to be 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 is married to [REDACTED] a United States citizen. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding that [REDACTED] failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated November 21, 2005.

The AAO will first address the OIC's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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.

In the sworn statement, dated April 25, 1992, the applicant states that he is from Afghanistan and that he purchased the Pakistan passport [REDACTED] the visa, and the airline ticket from a man. In the sworn statement, he states that his true name is [REDACTED] and that he does not know [REDACTED] the name of the person in the passport. The AAO notes that the translator signed the sworn statement, indicating fluency in Urdu and the English languages. *Sworn statement dated April 25, 1992.*

The record reflects that the immigration inspector found that the applicant applied for admission into the United States as a visitor for pleasure, presenting a photo-substituted Islamic Republic of Pakistan passport and a counterfeit B1/B2 nonimmigrant visa. The sworn statement noted above further reflects that the applicant stated that he came to the United States for political shelter and that the passport was photo-substituted. The immigration inspector conveyed that the applicant gave his true identity and asserted that he obtained the passport and visa through fraud. *Memo to File, dated April 25, 1992.*

In the applicant's January 29, 2004 affidavit, he stated that he could not find a decent job in Pakistan and that he heard from several friends that he could find employment in the United States. The applicant stated that he arrived at the port of entry into the United States on April 25, 1992. He stated that he came to the customs desk, where his passport was taken and he was told to take a seat and wait. The applicant stated that he fell asleep and was awakened by a customs agent who took his picture and stapled it to a card, which was given to him along with a document. He stated that he asked for his passport and was told that the card and document would get the passport back. The applicant stated that he was confused by this, and the agent said something like "if you have some money we can straighten this out now" and that he would be able to get his passport back right away. The applicant stated that after he told the customs agent that he did not have any money the customs agent told him that he could not help him. The applicant stated that he looked at the picture and it seemed fine, so he left. The applicant stated that when he took a closer look at the picture and the card given to him he saw the name [REDACTED]" from "Afghanistan," with the birth date January 1, 1954, and below that in a different handwriting, [REDACTED] and the address [REDACTED]

[REDACTED] The applicant stated that he never heard of that name or Brooklyn address before. He stated that customs took his passport, which is a legal, correct passport, bearing his name [REDACTED] [REDACTED] date, place of residence, signature, and father's name [REDACTED]

[REDACTED] The applicant stated that if the passport taken by customs is returned to him it would have this information.

The AAO acknowledges that the record contains the passport which the applicant presented upon entry in 1992, and it was issued in the name [REDACTED] and that the photograph in the passport appears to be of the applicant. However, a review of the record reveals that the signatures on the April 25, 1992 sworn statement, under the name [REDACTED] and a Form I-589, Application for Asylum dated August 5, 1992, under the name [REDACTED] are unique and virtually identical. The AAO finds that these documents were signed by the same individual. The sworn statement, aside from indicating that the applicant was born in Afghanistan; purchased a photo-substituted Pakistani passport; and was requesting political shelter, also clearly states that the applicant had no difficulty understanding the translator. The applicant has given no explanation as to why an immigration inspector would fabricate a sworn statement with a different name and then release the applicant with an I-94 in that fabricated name. The AAO finds no reason to doubt the validity of the sworn statement.

Although the record is unclear as to the applicant's true identity, the AAO finds that it is clear that the applicant entered the United States with photo-substituted passport containing a fraudulent visa, as determined by the immigration inspector. Regardless of the applicant's true identity, the AAO finds that the director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that although a Notice of Intent to Revoke the Form I-130 visa petition was issued on January 7, 2006, there is no indication in the record that the visa petition has yet been revoked, so the AAO will adjudicate the I-601 waiver and address the claim of extreme hardship. The AAO notes that in assessing the merits of the waiver application, it is not conceding that the applicant has established his true identity. That issue will still need to be resolved prior to any further action on his application for adjustment of status.

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 a 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 consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is [REDACTED]. 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).

In addition to other documents, the record contains letters from the applicant and his wife. A letter dated January 29, 2004 the applicant stated that while working as a taxi driver he met his wife. He indicated that he would not be able to find work in Pakistan and his relatives would not welcome his wife because she is a foreigner. He stated that he "never had any political group or religious group attachments in Pakistan." He stated that he takes medication for diabetes, which he would not be able to afford in Pakistan.

In a letter also dated January 29, 2004, [REDACTED] indicated that she has a close and loving relationship with her husband. She stated that she is worried about her husband's health if he returns to Pakistan, and that she would have a difficult time if she were to join him there.

[REDACTED] stated in a letter dated August 25, 2005 that she would have difficulty adjusting to Pakistan's laws, customs, and rituals. She stated that if she lived in Pakistan she would be separated from her family who live in the United States and from her son and parents, who have died here. [REDACTED] states that she would be alone without her husband and she "could still pay my bills, breathe and eat, exist day-to-day but, for me, all life would be changed."

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.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

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).

The present record is sufficient to establish that the applicant’s wife would endure extreme hardship if she joined her husband in Pakistan, the country where he claims he would return if the waiver application were denied.

The conditions in Pakistan, the country where the applicant claims his wife would live with him, are a relevant hardship consideration. While political and economic conditions in an alien’s homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The AAO is persuaded that the submitted evidence establishes that [REDACTED] would experience extreme hardship if she were to join her husband in Pakistan. The Amnesty International Report, the news articles, and the U.S. Department of State’s Country Reports on Human Rights Practices in 2006 (Pakistan) reveal that there is widespread discrimination and violence against women and that [REDACTED] would experience extreme hardship as a woman living in Pakistan.

The record fails to establish that the applicant’s wife would endure extreme hardship if she remains in the United States without him.

[REDACTED] makes no claim of economic hardship if her husband were to leave America as she indicates that she could still pay her bills if her husband’s waiver application were denied. The AAO notes that courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. See, e.g., *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider). Additional factors are needed to combine with economic detriment in order to categorize hardship as extreme.

[REDACTED] indicates that she would be alone in the United States without her husband. The psychological consultation, dated January 30, 2004, by [REDACTED] a licensed clinical psychologist, indicates that Ms. [REDACTED] as a Dysthymic Disorder, and previously experienced Major Depressive Episodes after the loss of her son and sister. He indicates that [REDACTED] is concerned about developing a Major Depressive episode if her husband is deported. [REDACTED] recommended that [REDACTED] obtain mental health treatment.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted consultation is based on a single interview between [REDACTED] and [REDACTED]. Although Mr. [REDACTED] recommended that [REDACTED] obtain mental health treatment, the record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] or any history of treatment. Moreover, the conclusions reached in the submitted consultation, being based on a single interview, do not reflect the insight

and elaboration commensurate with an established relationship with a psychologist, thereby rendering Mr. [REDACTED] findings speculative and diminishing the consultation's value in determining hardship.

Courts in the United States have stated that "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).

However, 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The letters from [REDACTED] reflect that she is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's wife, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*.

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 removal.

In the final analysis, the AAO finds that extreme hardship has been met in the event that the applicant's wife joined him in Pakistan. However, the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship in the event that the applicant's wife remains in the United States without her husband. 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 section 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), 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.