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FILE: [REDACTED] Office: ISLAMABAD, PAKISTAN Date: DEC 19 2008

IN RE: [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 PETITIONER:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Islamabad, Pakistan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant 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 having sought to obtain a visa through misrepresentation of a material fact. The applicant is married to a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his spouse.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer in Charge* dated May 6, 2004.

On appeal, counsel for the applicant asserts that the applicant's wife is suffering extreme emotional and physical hardship due to being separated from the applicant, and would suffer extreme physical hardship if she relocated to Pakistan due to her medical condition. *See Counsel's Brief in Support of the Appeal* at 2. Specifically, counsel states that the applicant's wife, who is now 68 years old, can no longer care for herself and her health has deteriorated. *Id.* He states that her eyesight is getting progressively worse as a complication of her diabetes and she has been advised by her doctors not to travel to Pakistan anymore to visit the applicant because it would be detrimental to her health. In support of the appeal, which was filed in 2004 and refiled in 2007 because it had been lost or misplaced, counsel submitted letters from the applicant's wife's doctors in Pakistan and the United States, letters from the applicant's children, medical records for the applicant, and a psychological evaluation of the applicant's wife. The entire record was reviewed and considered in arriving at 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.

Section 212(i) of the Act provides:

- (1) The [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 section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 566. The BIA has further stated:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the 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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Moreover, the U.S. Supreme Court additionally 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 the present case, the record reflects that the applicant is a sixty-eight year-old native of India and citizen of Pakistan who was denied an immigrant visa because he had previously attempted to obtain a nonimmigrant visa in 1993 through misrepresentation of a material fact concerning the number of bank accounts he held. The applicant's wife is a sixty-eight year-old native and citizen of Pakistan and Lawful Permanent Resident who has resided in the United States since 2001. The applicant currently resides in Karachi, Pakistan and his wife resides in New York.

Counsel for the applicant asserts that his wife is suffering extreme hardship as a result of separation from the applicant, which is exacerbated by her medical condition. In support of this assertion counsel submitted letters from the applicant's adult children that state the their mother's health is deteriorating and she is becoming depressed. A letter from the applicant's daughter states,

She can barely see and needs her spouse to help her. She has been growing more and more depressed for her husband's company and her health concerns will only be compounded by his absence. . . . She is losing hope and beginning to feel that she will die without my father by her side. *Letter from* [REDACTED] dated July 21, 2007.

A letter from the applicant's son, who is a physician and with whom the applicant's wife resides, states,

My mother . . . has often times traveled to Pakistan to visit my father. However, it has been strongly advised, both by her physicians in Pakistan and in the US, as by myself, that she should no longer be traveling to Pakistan due to health concerns. My mother has Diabetes Mellitus, Hypertension and High Cholesterol and has serious degeneration of her eyesight. . . .

The fact that she can no longer travel to Pakistan has serious consequences. Since her husband (my father) cannot currently come to the United States, my mother has been showing signs of depression. *Letter from* [REDACTED] dated July 30, 2007.

A letter from the applicant's wife's physician states that she had been suffering from diabetes mellitus for thirty years and was progressing toward End Stage Renal Disease, has had eye surgery due to vision problems resulting from her condition and needs constant follow-up for her eyes. *See Letter from* [REDACTED] dated May 25, 2004. Counsel also submitted a psychiatric evaluation for the applicant's wife that states that she reports mental anguish and fears that the applicant will die alone without her as well as symptoms including decreased appetite, erratic sleeping patterns, and pressure constricting her chest. *See Psychiatric Evaluation*, [REDACTED], dated May 31, 2007. The evaluation contains a diagnosis of Dysthemic disorder and states that the stress caused by separation from the applicant "appears to manifest with not only depressive

symptomatology, but also affecting her cognitive abilities, social functioning and health status.” *Psychiatric Evaluation*, [REDACTED]. The evaluation states that the applicant's wife is reportedly becoming “increasingly fearful and isolated in manner with periods of hopelessness and helplessness, and further states that medications for her depression and anxiety are recommended, but she is reluctant due to her sensitivity to medication. *Id.*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letters from the physicians and family members as well as the psychiatrist who evaluated the applicant’s wife indicate that she is suffering from a serious medical condition that prevents her from traveling to Pakistan to visit the applicant. As a result of the separation from her husband, the applicant's wife has shown signs of depression and anxiety and fears she and the applicant will die without seeing each other again. The documentation indicates that the applicant’s wife’s physical condition both prevents her from relocating to Pakistan to reside with the applicant and is exacerbated by the emotional effects of the ongoing separation from her husband. When considered in the aggregate, the factors of hardship to the applicant’s wife should she remain in the United States or relocate to Pakistan constitute extreme hardship. In light of her age and medical condition, it appears that separation from the applicant is causing the applicant’s wife great emotional distress that is jeopardizing her mental health. Further, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). Further, the physician who previously treated her in Pakistan states that the care she needs would be better delivered in the United States where her son, a physician, can monitor her condition. *See letter from* [REDACTED] dated May 18, 2007. The unavailability of suitable care in Pakistan, when combined with hardship caused by separation from her children in the United States, would amount to hardship that is unusual or beyond that which would normally be expected upon removal or exclusion to the applicant’s wife if she relocated to Pakistan with the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien’s bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country’s Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value

or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's immigration violation, attempting to obtain a nonimmigrant visa through misrepresentation of a material fact.

The favorable factors in the present case are the hardship to the applicant's wife, the applicant's lack of a criminal record, and his family ties, including three adult children and U.S. Citizen grandchildren, in the United States.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.