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

U.S. Citizenship and Immigration Services

Date: MAY 20 2013 Office: NEW DELHI, INDIA FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§1182(a)(9)(B) and 1182(i); Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States 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 obtaining an immigration benefit through fraud or misrepresentation. In addition, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

The record shows that the applicant departed the United States on December 16, 2008 and was subsequently ordered removed by an immigration judge on May 5, 2009. The applicant filed an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his spouse.

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 Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.[1] *Decision of the Field Office Director*, dated April 20, 2012. In the same decision, the Field Office Director denied the applicant's Form I-212, finding no purpose would be served in approving it, because the applicant remains inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C) of the Act.

On appeal, counsel contends that the applicant's spouse will suffer extreme hardship if the waiver application is not approved, and she submits additional medical and financial documentation for the record.

The record contains the following documentation: briefs filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion, and Forms I-601 and I-212; statements from the applicant, the applicant's spouse, the children and grandchild of the applicant's spouse; medical documentation for the applicant's spouse; and financial documentation. 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

[1] The record indicates that the applicant previously filed Form I-601 on March 5, 2007, prior to his removal from the United States. On November 17, 2008, the Field Office Director, Charlotte, North Carolina concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part:

> 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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .
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> (v) Waiver. – The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(i) of the Act and under section 212(a)(9)(B)(v) 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 applicant's U.S. citizen spouse is the only qualifying relative in this case. 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).

The record reflects applicant entered the United States without inspection in 1997, and continued to reside in the United States until September 2001, a period of more than one year. The record indicates that during this period of unlawful presence in the United States, the applicant procured

and used a fraudulent permanent resident card and social security card with an alias. The record further reflects that that the applicant applied for a non-immigrant visa at the U.S. Embassy in Islamabad, Pakistan, on or about February 25, 2002, and that during the application process, the applicant failed to disclose that had used an alias and that he had been living unlawfully in the United States. The applicant does not contest these findings of inadmissibility.

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 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 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel states that the applicant's spouse suffers from multiple medical conditions and contends that the applicant's spouse will suffer medical hardship if the applicant's waiver is not approved. The record indicates that the medical conditions of the applicant's spouse include diabetes, hypertension, large duodenal diverticulum, hiatal hernia, renal cell carcinoma, hyperdense cyst of the kidney, pancreatic atrophy, lung nodule, fatty liver disease, 20% calcification of the heart, ulcers of the stomach, degenerative changes in lumbar spine, and the onset of dementia. Extensive medical documentation in the record verifies these medical conditions. The record confirms that the applicant's spouse has been coping with most of these conditions for many years.

Counsel also contends that the applicant's spouse will suffer financial hardship if the applicant's waiver is not approved. The record indicates that the applicant's spouse is receiving social security benefits of $756.00 per month and that she received food stamps in 2011 and 2012. Financial documentation in the record includes copies of federal income tax returns from the period 2003 to 2007; however, the record lacks copies of recent income tax returns. The applicant states in a letter that the applicant's spouse had to sell a second home at a loss and her beauty shop business. There is no evidence in the record to verify the sale of these assets, nor is there evidence showing the financial gains to the applicant's spouse after the sale of these assets. 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 evidence in the record is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence.

Counsel further contends that the applicant's spouse will suffer emotional hardship if the applicant's wavier application is not approved. Medical documentation in the record indicates that the applicant's spouse suffers from depression. However, the record contains no further detail about psychological problems that the applicant's spouse may be facing and any treatment that she may require. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's spouse is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

The record further indicates that other family members of the applicant's spouse, the granddaughter of the applicant's spouse in particular, have been providing care and support to her. The evidence

on the record is insufficient to support finding that the applicant's spouse cannot manage her daily activities in the absence of the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, 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. The AAO recognizes that the applicant's spouse suffers from several medical conditions and will endure hardship as a result of separation from the applicant. However, in the absence of financial evidence to show that the applicant's spouse is unable to support herself, and the lack of psychological evidence to prove emotional hardship, her situation, 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 based on the record. The difficulties that the applicant's wife would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

Concerning the applicant's spouse's potential hardship upon relocating to Pakistan to reside with the applicant, the AAO notes that the Field Office Director found that relocation to Pakistan may cause hardship for the qualifying spouse due to her medical conditions and the present country conditions prevalent in Pakistan. The applicant's spouse was born in the United States, and both of her daughters and two granddaughters reside in the United States. Although the applicant's spouse has visited Pakistan, she is unfamiliar with the language and culture of Pakistan. In addition, the applicant's spouse suffers from multiple medical conditions and would have difficulty obtaining proper treatment for these conditions in Pakistan. The record establishes that if the waiver application were denied, the hardships that the applicant's spouse would face were she to relocate to Pakistan, when considered in the aggregate, rise to the level of extreme.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

The AAO notes that the Field Office Director denied the applicant's Form I-212 in the same decision. Because the applicant has demonstrated that he left the United States five months before the date on which he was ordered removed, the applicant is not required to file the Form I-212. [2]

ORDER: The appeal is dismissed.

[2] "[S]ection 212(a)(9)(A) of the Act applies only if the alien has departed or been removed from the United States *subsequent* [emphasis added] to issuance of an order." Memorandum from Louis D. Crocetti, Jr., Associate Commissioner, Office of Examinations, Immigration and Naturalization Service, *Processing of section 245(i) adjustment applications on or after the October 1, 1997 sunset date; Clarification regarding the applicability of certain new grounds of inadmissibility to 245(i) applications*, dated May 1, 1997. *See also*, Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner, Offices of Programs, Immigration and Naturalization Service, *Implementation of section 212(a)(6)(A) and 212(a)(9) grounds of inadmissibility*, dated March 31, 1997 (only individuals who have departed the United States after the issuance of a removal order are subject to the provisions of section 212(a)(9)(A)(ii)).