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

[redacted]

H5

Date: DEC 06 20[redacted] Office: BANGKOK FILE: [redacted]

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:

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, Bangkok, Thailand. 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 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 attempting to procure a visa and admission to the United States through fraud or misrepresentation. The record indicates the applicant submitted fraudulent documentation when applying for a Diversity Visa in 1997. The applicant does not contest this finding of inadmissibility, but seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his lawful resident spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 22, 2011.

On appeal, the applicant's attorney contends in the Notice of Appeal (Form I-290B) that the applicant's lawful resident spouse will suffer extreme hardship if the applicant is not allowed to immigrate to the United States. With the appeal counsel submits a brief; an affidavit from the applicant's spouse; banking and mortgage documentation for the applicant's spouse; medical documentation for the applicant's spouse; receipts for money transfers from the applicant's spouse to the applicant; and country information for Pakistan. 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.

Section 212(i) of the Act provides that:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's wife 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).

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. *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (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.

In the brief counsel for the applicant asserts that although the applicant's spouse has been a lawful resident only since 2010 she has resided in the United State since 1997, and has been removed from the Pakistan culture a long time and would have difficulty reintegrating. Counsel points out that the CIA World Fact Book refers to Pakistan as impoverished and underdeveloped with, at the time the appeal was submitted, unemployment at 6.2 percent and 32 percent of the population below the poverty line. Counsel states that the applicant, in light of her age and the fact she is not a registered nurse, would have difficulty finding employment and therefore suffer financial hardship in Pakistan. Counsel asserts that the applicant borrowed on the equity in her home to pay her school tuition, but the value of her condominium has depreciated to where she cannot sell if she relocated to Pakistan.

In her affidavit the applicant's spouse contends her extended family is in the United States, including a daughter and son. She states that given her age she cannot compete for jobs in Pakistan. She states that she has health issues for which she takes medication and needs a medical procedure and that in Pakistan she would have no health insurance. She asserts that since her education has been in English it would be useless in Pakistan as the terminology she learned in English would not be helpful. She further states that she wants to spend her life with the applicant, that she needs him to share responsibilities, and that without him here she would lose her family dreams.

The AAO finds that the record fails to establish the applicant's qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse claims her dream is to have her family together and she needs the applicant with her, the record contains no supporting evidence concerning the exact nature of the emotional hardship she will face due to long-term separation from the applicant. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Further, it has not been established that the applicant would be unable to visit the applicant in Pakistan, where she also has a daughter.

In claiming financial hardship the applicant's spouse states that she sends money to the applicant and counsel contends that the spouse cannot sell her condo due to depreciated value. Other than mortgage documentation and receipts for money transferred to the applicant, the record does not contain documentation establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse experiences financial hardship. The applicant submitted general

country information for Pakistan, but no information to establish that the applicant is unable to support himself while in Pakistan, thereby ameliorating the hardship for the applicant's spouse. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Counsel and the applicant's spouse contend she cannot return to Pakistan because of the length of time she has been gone and because she would be unable to find employment as the spouse asserts her nursing training in the United States would not be helpful in Pakistan. The applicant submitted country information that refers to Pakistan as impoverished and contains general information about the economy and specific sectors, but does not address why the applicant's spouse, particularly given her medical training, would be unable to secure employment. Although the applicant's spouse has been in the United States for a considerable period of time, it is noted that she was nearly 40 years of age at time she came to the United States, and the record does not establish that she would be unable to readjust to her native country were she to return.

The applicant's spouse contends she would suffer physically in Pakistan as she has health issues and is under medical care, takes prescriptions, and needs a procedure. Medical documentation submitted on appeal does not indicate serious health issues and the record contains no explanation from an attending physician of health concerns, prognosis, or any needed treatment for the applicant's spouse. Therefore the AAO cannot determine that the applicant's spouse would suffer hardship due to health issues if she were to relocate to Pakistan.

Based on the evidence on the record, the AAO finds that the applicant has failed to establish that his qualifying spouse would suffer extreme hardship if she relocated to Pakistan to reside with the applicant.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse 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 the applicant 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, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.