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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

H5

[redacted]

Date: MAR 13 2012 Office: ALBANY, NY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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.

Thank you,

Michael Rhew

for Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Albany, New York, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen. The motion to reopen will be granted, the prior decision of the AAO will be withdrawn and the appeal will be sustained.

The applicant, a native and citizen of Pakistan, was found inadmissible under Immigration and Nationality Act (INA or the Act) § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen spouse. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse.

The Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute. The applicant appealed that decision and the AAO dismissed that appeal on October 5, 2009, finding that the hardship that the applicant's spouse would suffer upon separation from the applicant did not meet the requirements under INA § 212(i). The applicant filed a motion to reopen the AAO decision.

On motion, counsel states that new facts, primarily the birth of a second child and the unavailability of other family members for support, demonstrate that the applicant's spouse will, in fact, suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In support of the motion, counsel submitted a brief and Exhibits 1-9.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant is inadmissible under INA § 212(a)(6)(C) and does not dispute his inadmissibility. A waiver is available to the applicant under INA § 212(i) dependent on his showing that the bar to his admission would impose extreme hardship on a qualifying relative. 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).

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).

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*, 138 F.3d at 1293 (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.

We have previously found that the applicant's spouse would suffer extreme hardship if she were to relocate to Pakistan with the applicant. We will now consider whether the applicant has presented new evidence to overcome our previous finding that his U.S. citizen spouse would not suffer extreme hardship if she were to remain in the United States without the applicant.

On motion, counsel for the applicant states that the new evidence presented illustrates that the emotional and financial hardship that the applicant's spouse would suffer would be extreme. In regards to the financial hardship to the applicant's spouse, counsel for the applicant states that the

birth of the applicant's spouse's second child, when taken in consideration with the other factors documented in the record, makes it "virtually certain" that the applicant's spouse would not be able to find employment to support her and her children. Counsel also states that new evidence illustrates that the applicant's spouse cannot rely on the financial support of other family members should the applicant no longer be able to reside in the United States. A new psychological assessment by [redacted], is submitted to illustrate how these factors have affected the applicant's spouse emotionally. The evidence illustrates that the applicant's spouse is the mother of two young children and that she relies on the applicant for financial support of her and her children. The record makes clear that the applicant's spouse married the applicant at 19 years old, did not finish high school, and had children shortly thereafter. Those children are both under the age of six. The qualifying relative has never entered into the workforce as a full-time worker and is financially dependent on the applicant. The new evidence submitted also illustrates that the applicant's spouse cannot rely on other family members for financial support as her mother is disabled, two of her siblings are in college, and her other sibling's income is not sufficient to support the entire family. Although it is reasonable to believe that the applicant's spouse could find employment, the psychological assessment submitted indicates that the applicant's spouse is suffering from Major Depressive Disorder and her limited coping skills, when combined with her lack of education and experience, would make it very difficult for her to support herself and her children.

Moreover, in regards to the emotional hardship to the applicant's spouse, the psychological assessment provided indicates that the applicant's spouse is particularly susceptible to the emotional impact of losing her husband and the father of her children due to the traumatic loss of her own father in a car accident when she was nine years old. The record also demonstrates that the applicant's spouse has a limited social network and that she relies on her husband for emotional support. [redacted] concluded that if the applicant's spouse were to lose the applicant's emotional support, "she can be expected to become even more depressed and dysfunctional and she has the potential to act self-destructively" as demonstrated by her previous actions in response to emotional challenges. The AAO finds that the applicant has presented evidence of new facts that illustrate, when considered in the aggregate, that the hardship to the applicant's spouse if she were to be separated from him would rise to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the applicant's remorse for his previous actions, the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to reside in Pakistan, the applicant's community ties in the United States, his gainful employment while in the United States, and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's material misrepresentation in connection with his initial entry into the United States and his subsequent unlawful presence in the United States.

The immigration violations committed by the applicant are very serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The applicant has provided evidence of new facts that illustrate his eligibility for a waiver of inadmissibility under INA § 212(i). Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish he is eligible for the benefit sought. After a careful review of the record, the AAO finds that in the present motion, the applicant has met his burden. Accordingly, the motion to reopen is granted, the prior decision of the AAO is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.