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]

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DATE: OCT 12 2012 Office: PANAMA CITY File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, 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,[1] who entered the United States without inspection in September 1991. In 1996, he married a U.S. citizen who filed a spousal Petition for Alien Relative (Form I-130). He divorced the petitioner in June 2002 and married another U.S. citizen in October 2002 who also filed a Form I-130 for the applicant in October 2003. Meanwhile, based on an approved Immigrant Petition for Alien Worker (Form I-140), the applicant sought employment-based adjustment of status in 2000. The adjustment application was denied on April 28, 2003 for fraud and a Notice to Appear was issued on July 24, 2003. After the applicant left the country on September 13, 2003, an Immigration Judge ordered him removed in absentia order on December 10, 2003. The applicant sought an immigrant visa as the beneficiary of the second spousal Petition for Alien Relative (Form I-130).

A Consular Officer found the applicant inadmissible to the United States under sections 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for unlawful presence of one year or more after April 1, 1997, and 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), based on the removal order. In denying the waiver application, the field office director also found the applicant inadmissible under 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa by fraud or misrepresentation. The applicant does not contest these findings,[2] and is seeking a waiver of the inadmissibilities in order to reside in the United States with his U.S. citizen wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), and thus also denied as a matter of discretion the Application for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212). *Decision of Field Office Director,* January 13, 2011.

On appeal, counsel for the applicant contends USCIS misapplied the legal standard for extreme hardship. In support of the appeal, counsel asserts that a qualifying relative's life would be disrupted with regards to raising a family if her husband were not present. The record contains documentation submitted in support of the waiver requests, request for permission to reapply for admission, family- and employment-based adjustment applications, and their respective decisions, as well as consular notifications, notices to appear, and orders of the Immigration Judge. The entire record was reviewed and considered in rendering this decision.

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[1] The denial decisions identify him as a citizen of [redacted] but immigration databases confirm he is a [redacted]i citizen. The record contains only his expired [redacted] work permit, and there is no indication he has permanent residence there.

[2] The AAO notes, however, that he had one Application to Register Permanent Residence or Adjust Status (Form I-485) pending from February 1997 to May 25, 2003 and another pending from 2000 to April 2003, so began accruing unlawful presence beginning May 26, 2003. As he had less than 180 days of unlawful presence, he incurred no inadmissibility.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> 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)(1) of the Act provides:

> 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 waiver of inadmissibility under section 212(i)(1) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant's wife. 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant contends that the applicant's wife will continue to suffer emotional and financial hardship if her husband is unable to reside in the United States. The record shows she has undergone surgery for endometriosis, a painful condition of the female reproductive system, and been diagnosed with major depression and anxiety incident to separation from her husband of nearly ten years. Documentation establishes that she suffered two miscarriages in the year the applicant left and, at 48 years old, worries that her prospects of conceiving are closing. A 2009 psychosocial report by her psychotherapist and supportive statements confirm the qualifying relative's claim that her depression has been worsened by the failure to have a successful pregnancy. Evidence reflects she has been undergoing fertility treatments in hopes of having a family with the applicant and, after his departure, even pursued in vitro fertilization and artificial insemination overseas. While noting that she has been able to visit her husband twice a year overseas, the AAO recognizes that these visits have not helped ease the pain of separation due to ongoing fertility issues. Although stating that with psychotherapy his patient's prognosis is good, the therapist recommends that she reunite with her husband to avoid further mental health complications and suggests that her emotional state contributes to her fertility problems. These circumstances represent hardship beyond that commonly experienced due to removal or inadmissibility.

The record establishes that the applicant's wife has been suffering and will continue to experience emotional hardship due to separation from her husband. The applicant has demonstrated circumstances adding weight to the emotional pain of a qualifying relative.

For all these reasons, the cumulative effect of the emotional hardship the applicant's wife is experiencing due to his inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were the applicant's wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

Counsel contends that the qualifying relative would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, the applicant's wife has lived here since 1985, been a U.S. citizen since 1991, and has numerous relatives here comprising a strong support network in this country. She documents that at least five siblings and an uncle are naturalized citizens, and she claims to have another U.S. citizen sibling and ten U.S. citizen nieces and nephews in the New York area. Whether she would move to the applicant's native Pakistan or to her native Guyana, the qualifying relative contends she would be leaving her adopted land of 27 years for countries where she lacks connections, would encounter gender and religious discrimination, has limited job prospects and no possibility of comparable income, and exposes herself to the risk of violence. Official U.S. government reporting confirms her fears. The U.S. Department of State (DOS) acknowledges in its *Guyana--Country Specific Information,* updated July 27, 2012, that the murder rate in Guyana is three times that of the United States and armed robbery a serious problem, while a DOS travel warning on Pakistan dated September 19, 2012 urges U.S. citizens to defer all non-essential travel to the country due to terrorist threats against and kidnapping of Americans. Access to adequate health care is also a concern.

As documentation supports these claims, the record reflects that the cumulative effect of the applicant's wife's ties to the United States and absence of ties elsewhere, her long U.S. residence and naturalization, and her personal safety and health concerns, were she to relocate, rises to the level of extreme. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she to relocate abroad.

Review of the documentation on record, when considered in its totality, reflects that the applicant has established that his wife would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 "balance 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 favorable factors in this matter are the extreme hardships the applicant's wife would face if the applicant were to reside in Pakistan or Guyana, regardless of whether she accompanied the applicant or remained here; the applicant's lack of any criminal record; extensive family ties here; supportive statements; employment and/or the promise of a job in the United States; and passage of more than 21 years since the applicant's unlawful entry into the United States and over nine years since his other immigration violations. The unfavorable factors in this matter are the applicant's unlawful presence in the United States, misrepresentations, and the removal order against him.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law and the fact that he has resided outside the United States for over nine years since leaving the country, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.