U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
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Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 0 1 2013 OFFICE: BALTIMORE FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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.

Thank you,

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland 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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §1182(i), in order to live in the United States with his U.S. citizen spouse and children.

The District Director concluded that the applicant 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. *See Decision of the District Director,* dated September 16, 2011.

On appeal counsel asserts that the director's denial was "clearly erroneous" and the evidence of extreme hardship was not considered in the aggregate. Moreover, the decision did not apply the proper weight to the evidence submitted to establish extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated October 13, 2011.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601 and counsel's letter; Forms I-130; Forms I-485, Application to Register Permanent Residence or Adjust Status; Form I-589, Application for Asylum and for Withholding of Removal; statements from the applicant's spouse, children, family and friends; financial documents; employment letters; medical documents; and birth, marriage, and divorce certificates. 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 that:

> (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.

The record reflects that the applicant attempted to enter the United States on February 21, 1992 by presenting a false Pakistani passport with the name [redacted] The applicant was paroled into the United States in order to apply for asylum. He withdrew his application in April 1997. As the applicant used a fraudulent passport to attempt to enter the United States, he was found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation. The record supports the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act, and the applicant does not contest his inadmissibility for this entry in 1992.

The director states in his decision that the applicant attempted to enter the United prior to 1992 using fraudulent documents. The record indicates that a man named with the same date of birth as the applicant attempted to enter the United States at Los Angeles, California on September 22, 1990 using fraudulent documents. The applicant contests this inadmissibility and claims his first entry to the United States was in 1992. He submits letters from friends in Pakistan and the United States to corroborate his claim. Although the letters state that the applicant first entered the United States in 1992, the evidence does not demonstrate that he did not attempt to enter the United States in 1990. Nothing in the record shows he was in Pakistan or another location in 1990. As the applicant has not met his burden of proof, he is still inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

> (1) The Attorney General [now Secretary, Department of Homeland Security, "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) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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. 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.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The applicant's 46-year-old spouse is a native and citizen of the United States. She explains that separating from the applicant would cause her "more than an extreme hardship." She states that the applicant is her "best friend," a "God-send," and has given her "a better life in every way imaginable." She states that she is the mother of four U.S. citizen daughters that she raised alone for eight years after her divorce. She explains that she felt she would spend the rest of her life by herself and would die alone until the applicant came into her life. She states that the applicant has provided her with emotional support, and the children now look to him as their father. She and the applicant also have a 2-year-old son together. She maintains that after the birth of their son, she developed anemia and high-blood pressure, as a letter from her doctor and medical evidence shows. Her doctor notes that due to her medical condition, she works part-time. The applicant's spouse states she cannot attend to basic household management and care for a new baby without the applicant's assistance.

The applicant's wife maintains that the applicant provides the majority of the financial contribution to their family, as he works full-time as a taxi driver and she works part-time as prep-cook at the , which corroborating employment and financial documents establish. She states that the applicant also contributes financially to help her support her eldest daughter, who lives independently and suffers from lupus; she has no medical insurance, cannot work, is on dialysis, and cannot "keep her food down." Medical documents reflect her daughter's diagnosis, frequent hospital visits, medical costs, and the applicant's participation in her care. The applicant's spouse also states that the applicant helps her to support her parents and grandfather financially and emotionally. She explains that her father suffered a stroke and can no longer control his bodily functions or use his right hand. She also supports her grandfather who lives with her parents and cannot feed or dress himself. Documents to show the applicant's financial assistance to his spouse's parents and grandparent were not submitted.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including her medical conditions; age; financial obligations to the household, her children, parents and grandfather; family responsibilities to her five children; household duties; and emotional strain. Considered in the aggregate, the AAO finds that the evidence demonstrates that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse indicates that she cannot relocate to Pakistan because she does not know the language or customs. She has no family, friends or employment prospects there. She fears that people in Pakistan would harm her for being an American, for being a woman and for inadvertently acting against Pakistani traditions. She notes that women in Pakistan have fewer rights than in the United States and gender discrimination is part of the Pakistani culture. She states that she would not be employable given the language, gender and cultural barriers, and thus could not financially support her family in the United States or visit them. Given these barriers, she would also live in isolation.

The U.S. Department of State's Travel Warning for Pakistan echoes the applicant's concerns regarding her safety and security. The warning indicates that U.S. citizens should defer all non-

essential travel to Pakistan. Groups such as Al-Qaeda and the Taliban have attacked U.S. civilians and target locations where Americans and Westerners tend to congregate. *See* U.S. Department of State, Bureau of Consular Affairs, Travel Warning, Pakistan (Sep. 19, 2012), http://travel.state.gov/travel/cis_pa_tw/tw/tw_5764.html.

The AAO has considered all aspects of relocation-related hardship, including the applicant's wife's family, social and economic ties to the United States; her loss of employment were she to relocate to Pakistan; her medical conditions; her lack of familiarity with Pakistani languages and culture; her safety and security; and country-condition concerns in Pakistan. Considered in the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Pakistan to live with the applicant.

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. at 301. 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 section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board 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 Board 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 for Section 212(i) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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 extreme hardship the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; his family ties to the United States; his good character; his steady employment; and his lack of a criminal record. The unfavorable factor in this matter is the applicant's misrepresentation of his identity when he entered the United States in 1992 and 1990. Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.