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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 2 6 2013 Office: NEW DELHI 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India. 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 admission to the United States through fraud or misrepresentation. During her consular interview the applicant provided false information about the divorce of her father and biological mother in order to procure an immigration benefit. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her U.S. citizen father.

The Field Office Director found that the applicant failed to establish that her qualifying relative father would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 1, 2012.

On appeal counsel for the applicant contends that the Service erred in determining that the applicant's parents were not divorced and has not provided documents evidencing any fraud. On appeal counsel submits a statement from the applicant; a letter from a Pakistani union council; an affidavit from the applicant's father; a letter from the father's physician and medical documentation for the applicant's father; general medical information; and country information for Pakistan. The record contains a statement from counsel; previous statements from the applicant and her father; and medical documentation for the applicant's father. 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.

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility.

The Field Office Director found that during a consular visa interview the applicant submitted a divorce decree of her father and biological mother when they are not actually divorced. Evidence in the record shows that the applicant's father and biological mother are not divorced, thus an I-130 petition filed on behalf of the applicant by her step-mother, her father's second wife, was invalid for immigration purposes. The approved petition was subsequently revoked by USCIS. Based on this information the Field Office Director found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation.

On appeal counsel asserts that the applicant father and biological mother were in fact divorced in 1999 and submits a divorce decree that he contends is real, properly filed, and registered in Pakistan. Counsel also submits an affidavit from the applicant swearing that the divorce decree she submitted was real and that her biological parents were divorced in 1999. Counsel also submits a letter from Local Union Government Counsel no. 39/4 in Pakistan stating that the divorce decree was properly filed and registered, and is true and correct.

The AAO notes that the record contains evidence of a detailed fraud investigation including personal and telephonic interviews with neighbors and relatives as well as document checks in uncovering that the applicant's father lives with the applicant's mother on visits to Pakistan, that the parents did not live at the address provided on the divorce decree, and that the father does not live with the applicant's step-mother while in the United States. In concluding that the applicant's biological parents are not actually divorced the investigation discovered that the parents' marriage and divorce decree were recorded in differing jurisdictions. Although local authorities in Pakistan determined the divorce decree to be authentic, the investigation determined the divorce to be fraudulent and that there was no true marital relationship between the applicant's father and the step-mother who petitioned for the applicant. Based on this information the previously-approved I-130 filed by the step-mother was revoked. In a notice of intent to revoke USCIS informed the petitioner that an investigation had determined her marriage to the applicant's father was not valid. There was no response from the petitioner, the applicant, or the applicant's father to the notice of intent to revoke.

The issue, therefore, becomes whether the applicant's presentation of the divorce decree constitutes a willful misrepresentation of a material fact that would render her inadmissible under section 212(a)(6)(C)(i) of the Act. As the applicant would have been aware that her father lived in their home on visits to Pakistan she was aware that they had not divorced, thus making the divorce decree fraudulent. The AAO concludes that the applicant's action were willful.

Additionally, the misrepresentation committed by the applicant must be material. According to the Department of State's Foreign Affairs Manual, a misrepresentation is material if either: (1) The

alien is excludable on the true facts; or (2) The misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. 9 FAM 40.63 N61.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 US 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409(BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

In this case, the applicant was seeking an immigration benefit through a relative petition filed by her step-mother when the relationship did not exist. To support that relationship the applicant provided false information that would have made her eligible for the benefit, a relative petition filed by the purported step-mother, for which she was not otherwise eligible given that the relationship did not exist. As such the applicant's misrepresentation was material, thus rendering her inadmissible under section 212(a)(6)(C)(i) of the Act.

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 father 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. INS*, 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 an affidavit the applicant's father contends that if the applicant cannot come to the United States he will be forced to live in Pakistan with her as it is not safe for her there. He states that he has illnesses and cannot afford the medication in Pakistan, so fears he will lose his life if his sugar level becomes uncontrollable because of stress. The applicant's father states that he fears he will find no work in Pakistan because of his age and high unemployment there and will then be unable to support his family. He states that as he will be unable to find clean water in Pakistan he must drink expensive bottled water. He states that people there will think he is from the United States and has money so he may be kidnapped to get money and that because of hatred towards the United States he may be in danger when people find out he was living in the United States for an extended time. He further states there are terrorist attacks every day and the government of Pakistan is unable to protect him.

Counsel asserts the applicant's spouse feels depressed and that his doctor says he is more likely to enter depression given his health, including hyperglycemia and diabetes. Counsel states that the applicant's father has been advised to never be in hot environments because it could lead to stroke, but Pakistan has high temperatures with inconsistent electricity. Counsel also asserts that in Pakistan

the applicant's father would have no money for medication and his stress would be uncontrollable, while in the United States he needs the applicant to help him with frequent medical appointments.

Counsel contends that the applicant's father has made only brief trips to Pakistan and is often questioned about his reasons for being there. Counsel assert's the father needs his employment in the United States to support his family and would be unable to find work in Pakistan due to unemployment rate there and that because of rising food prices it would be hard to feed his family. Counsel further states that Pakistan is dangerous with a hatred for Americans and that there are travel warnings for U.S. citizens because of threats from Al-Qaeda and Taliban elements as well as indigenous groups. Counsel contends it is impossible for the applicant's spouse to maintain a low profile in Pakistan as everyone becomes aware when anyone arrives from United States.

The AAO finds that the applicant has failed to establish that her qualifying father will suffer extreme hardship if he remains in the United States while the applicant continues to reside abroad or if he were to relocate abroad to reside with the applicant. Counsel and the applicant's father contend the father is depressed, but failed to provide any detail or supporting evidence explaining the exact nature of the emotional hardships and how such emotional hardships are outside the ordinary consequences of separation. Assertions cannot be given great weight absent supporting evidence. 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)).

Counsel contends the father needs the applicant in the United States to help with medical appointments and the record contains a brief statement from a physician indicating the applicant's father suffers from diabetes, hypertension, and diabetic neuropathies, needing the applicant for his daily care. However the record contains no detailed documentation to establish the severity of the father's condition or that any treatment requires the applicant's presence in the United States.

Counsel and the applicant's father have not asserted that the father will experience financial hardship if the applicant is unable to reside in the United States, but they contend the applicant's father will be unable to support the family in Pakistan as he would be unable to find employment. The record contains no detail about the applicant's father's employment, referring only to owning and operating his own business. There is no indication that he will not be able to obtain employment or that he does not have transferable skills he could employ in Pakistan. 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) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

Counsel and the applicant's father contend he cannot relocate to Pakistan because of his health and because Pakistan is dangerous. The record contains a brief statement from a physician indicating the applicant's father suffers from diabetes, hypertension, and diabetic neuropathies, and that a move to

Pakistan can worsen his condition due to poor medical technology and improper hygiene. The counsel submitted general information about health issues and treatment, but the record contains no specific, detailed documentation about the father's condition to establish that his health would be threatened in Pakistan and the general country information about health issues in Pakistan fails to address the father's conditions specifically or the area where he would live.

Counsel and the applicant's father contend that Pakistan is dangerous and the father would be threatened as he would be coming from the United States. However, the applicant's father has made periodic visits to Pakistan, staying with his family without apparent incident. Country information on the record shows general conditions, but nothing specific to where the applicant's family resides. These reports describe generalized country conditions and the record does not indicate how they specifically affect the applicant's father. The submitted country conditions information fails to establish that the applicant's father would be at risk.

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.