(b)(6)

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

DATE MAY 21 2013 Office: ATHENS, GREECE FILE:

IN RE: Applicant:

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:

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, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Afghanistan who failed to reveal a prior name used when applying for a visa in an attempt to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 26, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was in error and that the circumstances of the applicant's case demonstrate the applicant's spouse will experience extreme hardship due to inadmissibility. *Form I-290B*, received February 28, 2012.

The record contains, but is not limited to, the following documentation: a brief from counsel; statements from the applicant's spouse; statements from friends and associates of the applicant; copies of the applicant's work visa documentation for Pakistan and India; copies of human rights reports for Afghanistan and Pakistan; country conditions materials, including travel warnings and newspaper periodicals; a statement from [redacted] dated April 7, 2011, pertaining to the applicant's spouse; internet periodicals on depression; a breakdown of financial expenses of the applicant's spouse; and a statement from the applicant's spouse's mother. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant failed to reveal a prior identity when applying for entry into the United States, and that the applicant submitted a false police report from Peshawar, Pakistan.

Prior counsel for the applicant asserts that the applicant did not intentionally misrepresent himself by failing to reveal a prior used name when applying for a visa and that the document presented as a police report was obtained legitimately and paid for with 200 rupees. He asserts that the applicant was directed by his father to change his name, and that since English is not his first language he did not correctly answer whether or not he had previously been denied entry into the United States.

Application for Waiver, dated April 12, 2011. Counsel also asserts that the misrepresentation was not material and was timely recanted.

The applicant has not submitted any documentation demonstrating that he was compelled to change his name, or that he has in fact legally changed his name. It is not clear how he did not understand the significance of having been denied entry while using a previous name, especially a name which had only recently been changed according to his own testimony. As such, the AAO finds no evidentiary basis upon which to overcome the conclusion that the applicant's misrepresentation was not willful. In addition, whether or not the applicant had previously been denied entry is a material consideration regarding an individual's intent upon entry into the United States, and can directly affect an individual's eligibility for a visa or admission into the United States. Although the applicant claims he recanted his misrepresentation, merely admitting to a misrepresentation during a subsequent admission interview is not sufficient to demonstrate that an individual withdrew the misrepresentation, nor is admitting to a misrepresentation after confronted with the fact, as in this case, by consular officials. As such, the AAO finds the applicant to have willfully misrepresented a material fact by failing to reveal his prior entry refusal under a previous name in 1999.

The Field Office Director also determined that a document submitted by the applicant, a police report, under his prior name was not authentic. However, it is unclear what evidence the police report from Peshawar would have revealed, as no apparent criminal record exists. Based on documentation submitted into the record it appears the applicant had resided in Pakistan for temporary employment. While submitting a false document raises doubts about an applicant's veracity generally, in this case the false document did not conceal any fact which would have rendered him inadmissible or cut off a line of inquiry.

Nonetheless, the applicant remains inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for failing to reveal a prior entry refusal under a previous name, and he requires a waiver under section 212(i) of the Act.

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

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 a VAWA self-petitioner, 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. Hardship to an applicant or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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).

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. *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.

During a previous examination the Field Office Director made a point of examining hardship in countries where the applicant has had temporary work visas. It is noted that the applicant bears the burden of showing eligiblity for a waiver under section 212(i) of the Act, and the AAO may not speculate in the absence of clear assertions. Further, the record does not show that the applicant's temporary status in another country will continue to mitigate the impacts of having to relocate to an applicant's native country, in this case, Afghanistan. While the applicant may be residing in the UAE pursuant to a temporary work visa, there is no evidence that his spouse would be permitted to reside there, or that residence in the country represents a durable alternative to residing in the applicant's native country of Afghanistan.

In this case the applicant is a native of Afghanistan. Counsel for the applicant asserts on appeal that the applicant's spouse would experience extreme hardship if she had to relocate to Afghanistan with the applicant. *Brief of Appellant*, received March 29, 2012.

The applicant also discusses his anxiety at relocating his spouse to Afghanistan due to the conditions there. He notes that anti-American sentiment is high and that there is a high rate of political violence and crime, and that unemployment is a significant problem.

The record contains substantial documentation on country conditions, outlining the hardships of life in Afghanistan, a country still enduring major military operations and spasms of violence initiated by the Taliban and other armed groups. A Travel Warning issued by the U.S. State Department's Bureau of Consular Affairs on March 8, 2011, warns against travel to Afghanistan and the security threat to all U.S. citizens is critical. It goes on to state that no part of Afghanistan should be considered immune from violence, including the potential for hostile acts, targeted or random against U.S. and other Western nationals at any time.

The applicant's spouse has pointed out, and the record indicates, that she has resided in the United States for 19 years, a significant period of time. In addition, the applicant's spouse's mother resides

in the United States near her daughter, a signficant tie that would be severed upon relocation to Afghanistan.

When these factors are considered in the aggregate, the AAO finds that they rise above the common impacts to a degree of extreme hardship.

The applicant's spouse has asserted, by and through counsel and former counsel for the applicant, that she is experiencing extreme emotional and financial hardship due to separation from the applicant. *Brief of Appellant*, received March 29, 2012. The applicant has submitted a breakdown of his spouse's financial obligations, asserting that she has a net income of only $180 a month.

An examination of the record does not reveal any documentation which corroborates the applicant's assertion that his spouse is unable to meet her financial obligations. The summary of monthly obligations is not sufficient to demonstrate that she is unable to meet her financial obligations. The record indicates that she resides with her mother, a factor that would also serve to mitigate the impacts of separation from her spouse.

While the applicant asserts that his spouse is experiencing emotional hardship, and has submitted a doctor's letter, the AAO notes that the applicant and his spouse have never resided together for any period of time in the United States. As such, the AAO does not find the record to establish that the applicant's spouse is experiencing a significant change in her circumstances due to the applicant's inadmissibility.

Even when the hardship factors asserted due to separation are examined in the aggregate, the AAO does not find them to rise above the common impacts of separation to a degree of extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* 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.