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

(b)(6)

[redacted]

Date: APR 07 2014 Office: NEBRASKA SERVICE CENTER [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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with her U.S. citizen parents.

The Service Center Director found that the applicant had established extreme hardship to her qualifying relative parents if they were to relocate to Pakistan to reside with the applicant, but failed to establish that the qualifying relatives would experience extreme hardship due to separation as a consequence of the applicant's inadmissibility. The application was denied accordingly. *See Decision of the Director* dated August 28, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the applicant has proved her father will experience extreme hardship because of the applicant's absence.[1] No additional documentation was submitted with the appeal. The record contains a statement from the applicant, letters from a doctor treating the applicant's parents, a letter from the applicant's father, a letter confirming the applicant's U.S. citizen children attend high school in the United States, and tax returns from 1995 and 1996 for the applicant and her spouse.

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:

> 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)

[1] Counsel asserts that when apprehended in 1994 the applicant was not charged with misrepresentation, but rather with being illegally present in the United States, and never received notification from an immigration office or court. The record contains an Order to Show Cause (OSC) issued to the applicant on August 19, 1994, charging her as entering the United States without inspection, but the OSC apparently was not filed with the Immigration Court. USCIS records show that the applicant's spouse, who was apprehended at the same time, was ordered removed by an Immigration Judge on September 19, 1997. It is further noted that the determination of inadmissibility under section 212(a)(6)(C)(i) of the Act was made by the Consular Officer based on misrepresentations made on her Form DS-230, Application for Immigrant Visa, as well as at the time she was admitted as a B2 visitor.

> 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....

The record reflects that the applicant entered the United States in 1991 as a visitor for pleasure but in fact was an intending immigrant. The applicant then left the United States and was apprehended in 1994 attempting to reenter from Canada, but claimed she had never departed.

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 U.S. citizen parents are the qualifying relatives 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, 1293 (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.

Counsel for the applicant contends that the applicant's father is elderly, has many medical conditions, and is anxious to have his eldest child near him. Counsel also states that the applicant's two U.S.-born children are living with her parents and contends that the applicant's will alleviate hardship to her parents.

The applicant states that her U.S. citizen children live with her parents in the United States, but that her father and mother have multiple health issues making it difficult to care for teenage grandchildren, and thus causing extreme hardship. The applicant states that her mother is old and illiterate, does not know much English and is unable to even shop alone. She states that her parents are alone and need help. The applicant states that of her five siblings in the United States only three live in Texas, where her parents live, and two of them have their own homes. She states that one brother lives with their parents but travels often for his work. She states that a sister in the United States has her own home and family and another brother lives in North Carolina. The applicant states that when her father had a stroke her sister needed to take him to the hospital. The applicant further states that her children need her to care for them and they also face hardship from separation, so they have visited her in Pakistan, where the applicant feels it is dangerous for them. The applicant's father states that most of his children are married and do not live with him, except one who is mostly out of town.

A letter from the father's medical doctor states that his medical problems include hyperlipidemia, coronary artery disease, osteoarthritis, and interstitial lung disease. It further lists medications taken by the applicant's father. A letter from the same doctor states the applicant's mother has hypertension and claustrophobia. The letter also lists her medications.

As noted above, the director found that the applicant had established extreme hardship to her U.S.-citizen parents were they to relocate abroad to reside with the applicant as a result of her inadmissibility. As such, this criterion will not be re-addressed on appeal.

The AAO finds that the record has established that the qualifying relative parents suffer extreme hardship as a consequence of being separated from the applicant. The record establishes that the applicant's parents are elderly with multiple medical issues while having the stress of caring for the applicant's teenage children with limited assistance from other family members.

Considering in the aggregate the parents' age, particularly her father at age 79, their health condition, and the stress of their responsibility for the applicant's children, the applicant has established that her parents would face extreme hardship if the waiver request is denied

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 section 212(h)(1)(B) 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 for 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 hardships the applicant's United States parents and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying relatives in the United States, and her apparent lack of a criminal record. The unfavorable factor in this matter is the finding of the applicant's misrepresentation to gain entry to the United States.

Although the applicant's violations of the immigration laws are serious, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.