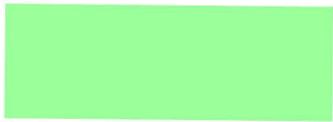




U.S. Citizenship
and Immigration
Services

(b)(6)



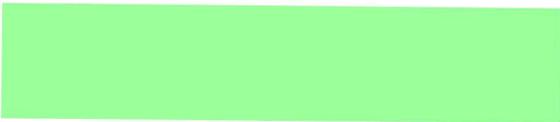
DATE: **JUN 04 2013** OFFICE: WASHINGTON, DC

FILE:

IN RE: APPLICANT:

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

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, Washington, DC, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 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 having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated May 18, 2010. The AAO dismissed the appeal, finding that the applicant did not establish his U.S. Citizen spouse would experience extreme hardship given his inadmissibility. *See Decision of AAO*, February 11, 2013.

On motion, counsel contends the applicant's spouse and stepchild will face dangerous country conditions in Pakistan, and that the spouse would be unable to access medical care for her spinal stenosis, arthritis, and swollen legs. Counsel moreover asserts that the AAO failed to consider family separation in an analysis of hardship.

The record includes, but is not limited to, statements from the applicant's spouse, letters from family and friends, a letter from a physician, financial records, articles on Pakistan, briefs, evidence of birth, marriage, divorce, residence, and citizenship, documentation on deportation proceedings, other applications and petitions, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO notes that the applicant is otherwise inadmissible due to his 1988 deportation proceedings. Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (ii) Other aliens.-Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant entered the United States without inspection in October or November 1988. He was placed in deportation proceedings under section 242 of the Act, and he was granted voluntary departure on November 22, 1988, with permission to remain until December 26, 1988. The applicant failed to depart within the time period specified, and the grant of voluntary departure became an order of removal pursuant to 8 C.F.R. § 1240.26. The applicant departed the United States in June 1998, and was re-admitted on May 2, 2001 as a nonimmigrant.

Although the applicant's removal order became effective and the applicant departed more than 10 years ago, he failed to remain outside the United States for the requisite time period, and he has not requested permission to reapply for admission after deportation or removal. Thus, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, and requires permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

.....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence and subsequently departing the United States. Inadmissibility is not contested on motion. Based on the present record, the AAO affirms the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver under section 212(a)(9)(B)(v) of the Act.

However, the applicant may also be inadmissible pursuant to section 212(a)(6)(C) of the Act, which 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:

(1) 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.

In the present case, the record reflects that the applicant obtained a B-1/B-2 visa from the U.S. embassy in Islamabad on August 1, 2000, was admitted to the United States on May 2, 2001, and has remained in the United States since that date. It is unclear from the record whether the applicant made material misrepresentations or committed fraud when applying for the nonimmigrant visa, given his prior immigration history.

Regardless of whether the applicant also requires a waiver under section 212(i) of the Act, the standard for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) are the same.

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 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.

In the brief submitted on motion, counsel contends the spouse's child would suffer if she relocated to Pakistan, which would in turn affect the spouse. Counsel explains that the child would not have access to the amenities in the United States, and that she, as a female child, would be subject to elevated levels of violence. An Amnesty International report is submitted in support. Counsel moreover indicates the child will experience violence towards Christians, and that the applicant would worry about her safety as well as that of his spouse. Counsel adds that the spouse will not have access to medical care for her conditions in Pakistan.

Counsel further claims that the applicant's spouse will experience medical, emotional, and financial hardship without the applicant present. Counsel indicates that the applicant always cared for the spouse, who suffers from spinal stenosis, arthritis, and swollen legs. Counsel adds that the applicant cannot afford to maintain two households. Counsel additionally contends the AAO did not give proper consideration to family separation.

Counsel has failed to supplement the record with financial, medical, or other evidence to establish that the spouse would experience extreme hardship upon separation from the applicant. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without additional evidence with respect to the spouse's medical conditions, their income and expenses, or the spouse's psychological state, the AAO cannot conclude that the spouse would experience extreme hardship upon separation from the applicant.

Furthermore, the applicant has not submitted sufficient evidence to demonstrate that his spouse would experience extreme hardship upon relocation. Although counsel submits an Amnesty International report on human rights in Pakistan, and makes assertions on honor killings and other

violent acts the spouse and her daughter may be subject to, the record still lacks evidence on whether they are Christians, and would be subject to threats based on their religion, or whether they would be targeted for other violence. The record also lacks supplemental documentation on whether the spouse has specific fears about relocation. Furthermore, the applicant's spouse has also failed to address whether she and her daughter would relocate to Pakistan given the applicant's inadmissibility.

The AAO notes that relocation to Pakistan would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Pakistan.

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 U.S. Citizen spouse as required under section 212(a)(9)(B)(v) 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 a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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, although the motion is granted, the underlying application remains denied.

ORDER: The motion is granted, but the underlying application remains denied.