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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: OCT 31 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h) respectively.

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 pursuant to section 212(a)(6)(C) of the Act for having, by fraud or willfully misrepresenting a material fact, procured admission into the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his lawful permanent resident mother, [REDACTED]. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his mother.

The record reflects that the applicant was admitted to the United States on March 31, 1992 upon presenting a passport belonging to another person. The applicant was convicted on September 18, 1992 in United States District Court for the Eastern District of Virginia of the knowing possession of false identification documents with intent to defraud the United States in violation of 18 U.S.C. § 1028(a)(4). The applicant was sentenced to 90 days imprisonment. The applicant's mother filed the I-130 petition on May 31, 1994 and it was approved on March 27, 1995. The applicant subsequently filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on January 23, 2004. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on or about May 22, 2006.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director*, dated June 7, 2006.

On appeal, counsel submits a letter from the attending physician of the applicant's mother, [REDACTED] accompanied by her medical records. Counsel asserts that the applicant supports and provides care for his mother. The record also contains, among other documents, affidavits from the applicant and his sister, [REDACTED] and tax records for the applicant for the year 2003.

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 was admitted to the United States on March 31, 1992 upon presenting a passport belonging to another person. The applicant was convicted on September 18, 1992 in United States District Court for the Eastern District of Virginia of the knowing possession of false identification documents with intent to defraud the United States in violation of 18 U.S.C. § 1028(a)(4). It is also noted that on his Form I-485, the applicant initially failed to disclose his use of fraudulent documents or his conviction, and he listed September 18, 1991 as the date of his last arrival to the United States. Thus, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The AAO notes that the applicant's conviction is for a crime involving moral turpitude, but subject to the petty offense exception in section 212(a)(2)(A)(ii) of the Act. Section 212(a)(2)(A) of the Act states, in pertinent part:

(i) In general.— . . .[A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Although mere possession of fraudulent immigration documents is not a crime involving moral turpitude, knowing possession with intent to defraud the United States is. *See Matter of H- and Y-*, 3 I&N Dec. 236 (C.O. 1948), *Matter of Serna*, I.D. 3188 (BIA 1992). However, pursuant to 18 U.S.C. § 1028(b)(6), the maximum punishment for possession alone was no more than one year and the applicant was sentenced to only 90 days incarceration. Thus, the applicant is not also inadmissible under section 212(a)(2)(A)(i) of the Act.

Section 212(i) of the Act provides that:

(1) 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.

The AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. The only relative that qualifies under section 212(i) is the applicant's lawful permanent resident mother. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) 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 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In his letter, [REDACTED] states that the applicant's mother has a "history of coronary artery disease, status post bypass and angioplasty, as well as stent placement." He further indicates that she suffers from "multiple medical conditions including diabetes mellitus, hypertension, hyperlipidemia, obesity, and degenerative joint disease." He asserts that she requires "continuous help and support for her daily needs, as well as medical care." He states that the applicant's mother is "solely dependent" on the applicant for all her daily needs and care.

In his affidavit, the applicant states that his siblings are married and have family obligations that prevent them from caring for his mother. He asserts that he is responsible for supporting his mother and that she will suffer emotional and financial hardship, in addition to the possible worsening of her medical conditions, in the applicant's absence. He further contends that his mother's health conditions require attention by "specialist doctors" in the United States. In her affidavit, the applicant's sister confirms that the applicant financially supports their mother.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that the applicant's mother faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The record shows that the applicant's mother suffers from multiple serious health conditions and is dependent on the daily assistance of the applicant, with whom she resides. Although the applicant has failed to submit additional documentary evidence to support his claim that he financially supports his mother, there is evidence in the form of affidavits from the applicant and his sister demonstrating that this is so, and that the ability of the applicant's married siblings to care for and support the applicant's mother is limited by their other family obligations. Though the evidence submitted by the applicant in support of the claim of financial hardship would not be sufficient in most cases, when this evidence is viewed in connection with the evidence showing that the applicant provides daily care and assistance to his gravely ill mother, the AAO determines that the applicant has sufficiently demonstrated that his mother would experience extreme hardship if the waiver application is denied. The AAO also takes notice that "effective emergency response to personal injury and illness is virtually non-existent in Pakistan." *U.S. Department of State, Travel Warning for Pakistan*, October 2, 2008. Furthermore, "facilities in the cities vary in level and range of services, resources, and cleanliness, and may [be] . . . below U.S. standards; facilities in rural areas are consistently below U.S. standards." *Id.* This evidence supports the applicant's assertion that his mother would be unable to receive adequate care for her multiple serious medical conditions in Pakistan. The applicant's mother would also be separated from two of her children if she left the United States. Based on the above factors, the applicant has established that his mother would suffer extreme hardship if the waiver application is denied.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the Board held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (Secretary of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez, supra*, at 12.

The equities in this case warrant a favorable exercise of discretion. The negative factors in this case consist of the applicant's use of a fraudulent identification document to procure admission to the United States in 1992, his conviction for possession of a fraudulent identification document, and his initial failure to disclose these facts on his adjustment application. The positive factors in this case include the applicant's family ties to the United States, the hardship that the applicant's mother would suffer if the applicant were removed from the United States, and no indication of further arrests or convictions since 1992. Although the applicant's past violations of the immigration laws of the United States are serious and cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.